

THE DEVELOPMENT OF  
DOMINION STATUS  
1900-1936



*By the same Author*

THE PRINCIPLE OF OFFICIAL  
INDEPENDENCE

THE CIVIL SERVICE OF CANADA

CONSTITUTIONAL ISSUES IN  
CANADA, 1900-1931

THE DEVELOPMENT  
OF  
DOMINION STATUS  
1900—1936

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*To*  
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## PREFACE

THAT peculiar political condition which is now called Dominion status has had a long and varied history; but no part of its development has been so full of constitutional interest as the last twenty years. Yet those who have lived through this period are frequently very much at loss to recall the exact sequence of events and the manner in which Dominion autonomy has proceeded step by step to its present position. This book is an attempt to give the general reader a concise account of what Dominion status means, and how it has grown out of the political experience of the immediate past. To accomplish this, the book is arranged in two parts: first, a narrative of the development of Dominion status since 1900; and second, a very generous selection from the essential contemporary documents by means of which the reader may, if he so desires, study this development first-hand. These documents have not been limited to official reports and blue-books (which are naturally indispensable in dealing with such a topic), but they also include other material from newspapers and periodicals, which supplement the formal papers and frequently bear additional information which is unobtainable elsewhere. The two parts have been linked together by footnotes and cross-references.

I wish to thank the newspapers, periodicals, and authors for their generous permission to reprint their articles, which have added materially to the value and interest of the book. More explicit acknowledgement is contained in the text at the head of each extract.

I am also deeply indebted to all those who have helped me and have in many instances read over large parts of the manuscript. I wish to mention especially Mr. John W. Dafoe of the *Manitoba Free Press*, whose knowledge of this part of Dominion constitutional history is unrivalled and whose advice and criticism have been constantly at my disposal. Sir Robert Borden, Dr. Walter C. Murray, Hon. Norman McL. Rogers, Mr. John E. Read, Professor Frank H. Underhill, and Professor Robert A. MacKay—all have given generously of their time and knowledge and have made many valuable suggestions. Finally, I must thank

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R. MACG. D.

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PART I  
INTRODUCTION



## THE DEVELOPMENT OF DOMINION STATUS

1900-36

THE problem of overseas government within the British Empire has existed since the founding of the first colony in Virginia in 1607, and scarcely a year has passed since then which has not made some contribution to its solution. These developments have, of course, varied greatly in their nature, their effects, and their importance; some changes have been slow, others rapid; some have been experimental, tentative, and far-sighted, others have been marked by sheer blundering and incompetence; some have involved rebellion and revolution, others have been punctuated by nothing more startling than an amended statute or a government blue-book. One characteristic, however, these developments have had in common: they have, with rare exceptions, been concerned with the movement towards greater local self-government. This, indeed, has been the paramount problem of the Empire during three hundred years, and it is this which has given a certain continuity and uniformity to the constitutional history of many of the British possessions. In earlier times the emphasis was placed on autonomy in the narrow sense, the achievement of control over all domestic matters; in recent years the movement has broadened out so as to include control over foreign affairs as well. The final products of this evolution are the self-governing Dominions, possessing complete equality of status with Great Britain, and forming with the latter the British Commonwealth of Nations.

This movement towards greater Dominion autonomy has been almost uninterrupted for a century; but it has been enormously accelerated during the past twenty-five years, due in a large measure to the rapid development of national feeling which accompanied the Dominions' participation in the War. It is probably erroneous, however, to consider the War period as marking any violent break with the past. There was no revolutionary change, no denouement which might not reasonably have been expected. The War merely hastened the latest phase of this long history of self-government, and brought the Dominions, more precipitately than



had been foreseen, to their logical and inevitable goal. The importance of the last twenty-five years rests, therefore, upon the sudden quickening which took place in the evolutionary process; the crowded succession of constitutional incidents, each of which brought to the front some phase of Empire relationships; and the final achievement of the constitutional destiny of the Dominions.

The brief eventful history of these recent years may, for purposes of exposition, be divided into five parts, each marking off a fairly definite stage in constitutional development.

I. *The Period before the War (1900-14)*, when the Dominions had achieved complete control over all domestic matters, and were beginning to make cautious advances beyond their own boundaries.

II. *The War and the Peace Treaty (1914-20)*. This witnessed the outbreak of war and the resulting stimulus to nationalism in the Dominions, the creation of the Imperial War Cabinet, and the first assertion by the Dominions of their right to an 'adequate voice' in foreign policy. It closed with the international recognition given the Dominions by their admission to the Peace Conference and the League of Nations.

III. *The Period of Tentative Centralization (1920-2)*. This covers the two or three years following the Peace Treaty, when an attempt was made to perpetuate the Imperial Cabinet and to formulate and carry out a common foreign policy for the Empire.

IV. *The Period of Decentralization (1922-6)*, extending from the Chanak Incident of 1922 to the Locarno Treaty in 1925. It is the most eventful and important period of all; for it witnessed the breakdown of a common foreign policy and the abandonment of the idea of the diplomatic unity of the Empire.

V. *The Period of Equal Status (1926 to the present time)*. The outstanding event in this period was the Report of the Imperial Conference of 1926, which gave a formal recognition to the new conditions in the Empire. Subsequent constitutional developments have been, for the most part, merely elaborations of or logical consequences from the principles enunciated in this Report.

## I. THE PERIOD BEFORE THE WAR, 1900-14

The grant of responsible government in 1848 had given to the British colonies the right to control their domestic affairs, but the definition of what was included within that field varied greatly with the passage of time. Lord Durham, for his part, had been most explicit, and had drawn up a classification of subjects which were to be placed under the Imperial Government alone. 'The matters which so concern us', wrote Durham, 'are very few. The constitution of the form of government,—the regulation of foreign relations, and of trade with the mother country, the other British colonies, and foreign nations,—and the disposal of the public lands, are the only parts on which the mother country requires a control.'<sup>1</sup> But the Report had scarcely been presented when the barrier showed signs of approaching collapse. Responsible government proved most impatient of boundaries; and although it had been granted on the assumption that the field of colonial jurisdiction was definitely limited, it speedily proceeded to make that field more and more comprehensive. The following seventy years saw the so-called domestic area being steadily widened; the line between local matters and those of Imperial concern was continually being shifted to the constant disadvantage of the latter, until Durham's Imperial field had been narrowed to one subject only, that of foreign affairs.

Thus, at the outbreak of the War in 1914, the Dominions enjoyed virtually complete self-government in all domestic matters: they amended, directly or indirectly, their constitutions; their parliaments legislated within their borders without interference from London; they drew up their tariffs; they regulated their immigration; they had their own military and naval forces subject to their own control. Certain theoretical limitations on their power still existed, such as the legal supremacy of the Imperial Parliament, but these were of little or no consequence in practice; for the Imperial Government was scrupulously careful not to interfere in matters which concerned the Dominions alone.

The Dominions had also succeeded by 1914 in establishing a limited right to enter into relations with foreign countries, notably in the negotiation of commercial treaties. Early in

<sup>1</sup> *Lord Durham's Report (Lucas)*, ii, p. 282.

colonial history such treaties were concluded solely by agents of the Imperial Government; later, representatives from the colony concerned were used as advisers to the British officials; and still later, a colonial representative was appointed plenipotentiary along with the British diplomatic agents. It was not long before the colonial plenipotentiary began to play the dominant role, and in the Canadian-French Treaty of 1907 the Canadian representatives carried on all negotiations and the British official signed the agreement as a mere formality.<sup>1</sup> It is characteristic, however, of the manner in which these matters were conducted prior to the War that while the Dominions had full power in practice to conclude their own commercial treaties, a nominal oversight was still exercised by the Imperial Government at three different stages: through the appointment of plenipotentiaries (one of whom was always a British official), through the signing of the agreement by the British plenipotentiary, and through the retention of the power of ratification. Nevertheless, Sir Wilfrid Laurier succeeded at times in avoiding even a theoretical control by instituting the practice of informal trade agreements, which were carried into effect by reciprocal legislation in Canada and the foreign country concerned—a procedure which completely eliminated the British Government from any part in the negotiations.

In addition to these very real powers in drafting new treaties, Dominion governments had obtained other concessions. They were no longer bound by new commercial agreements made by the British Government unless they specifically desired to be included, and, when included, they had the option of withdrawing separately when they desired. To these privileges may also be added two others: a well-established right of the Dominions to be consulted when the Imperial Government was entering into new commercial agreements; and the gradual withdrawal of the Dominions from the scope of the most-favoured-nation clause in old Imperial treaties which had been concluded before the Dominions had acquired the power of contracting out. It is, however, important to note that in the exercise of all these powers—with the exception of Laurier's informal trade agreements—the diplomatic unity of the Empire was undis-

<sup>1</sup> Sir Charles Tupper had created a similar precedent in negotiating a treaty with France in 1893, but a dispatch of the Colonial Secretary in 1895 had aimed at restoring the older practices.

turbed. Negotiations were carried on through the legal machinery of the British Government; and although the agents might in fact be the appointees of a Dominion, they spoke, not for the Dominions, but for the British Crown.

The power to make *political* treaties was guarded by the Imperial Government much more jealously, although frequently the procedure approximated to that used for treaties of commerce. For some time before the War, the practice had been to allow Dominion representatives to take part in political negotiations in which the Dominion's interests were unmistakably involved, but the British member, unlike his fellow in commercial negotiations, continued to function as an important part of the delegation. In 1909 the Dominion of Canada had gone a step farther in forming with the United States an International Joint Commission, composed of three Americans and three Canadians, for the purpose of settling disputes regarding boundary waters and any other question which the two governments might agree to submit to it. In all these instances the diplomatic unity of the Empire remained unimpaired, and the appointment of representatives (including the Canadians on the International Joint Commission) was made through the Imperial Government. Occasionally political treaties negotiated by the United Kingdom would contain a clause which provided for the adhesion of the Dominions if they so desired. Canada, for example, came under the Anglo-Japanese Treaty of 1911 in this way, but she made two reservations to the terms of the original agreement.<sup>1</sup> Political treaties of a more general nature, which might affect the Dominions indirectly as parts of the Empire, were conducted by the British Government with no reference whatever to the Dominions, although the Imperial Conference of 1911 was able to secure a limited and cautious commitment from the Asquith Government which promised possible consultation in the future when the interests of the Dominions were involved.<sup>2</sup>

The Dominions had also been accorded separate representation at a number of international Conferences dealing with matters of a technical nature, such as the Universal Postal Union Convention in 1906, the Radiotelegraphic Union Convention in 1912, and the International Conven-

<sup>1</sup> *Can. Stat.*, 3-4 Geo. V, c. 27.

<sup>2</sup> Cf. *infra*, p. 10; Section I, B. 2 (b), pp. 155-7.

tion for the Safety of Human Lives at Sea in 1914. At the two latter Conferences the Dominion representatives instituted a new precedent by signing separately for the King in respect of those Dominions, while the British representatives signed on behalf of the United Kingdom and the Empire.<sup>1</sup>

Co-operation among the self-governing units of the Empire was obtained to some degree through the Imperial Conferences.<sup>2</sup> Seven meetings had taken place before the War—five principal Conferences and two subsidiary ones. The first in 1887 was merely an adjunct to the celebration of the Queen's Jubilee, and those of 1897 and 1902 coincided with similar ceremonies.<sup>3</sup> A resolution of the 1897 gathering, however, recommended that the meetings should be held periodically, and from that time on they took place every four or five years.<sup>4</sup> The Imperial Conference was a unique body. It was essentially a meeting of governments: each self-governing unit was represented by its Prime Minister and one other member of his cabinet, and each country had but one vote. It was at first presided over by the Colonial Secretary, but as it developed in importance the latter was displaced by the British Prime Minister. The primary functions of the Conference were consultation and discussion. It was in no sense an executive body; for its powers were limited to the passing of advisory resolutions, which depended for their effectiveness on the subsequent action and co-operation of six autonomous legislatures. Controversial matters were debated, but rarely pressed to a vote, so that the greater part of the Conferences' time was spent on unimportant subjects or on vague motions so phrased as to command the maximum of acceptance.

In these circumstances [said *The Round Table*] it is not a matter for great surprise that the pre-war Imperial Conferences should not have been very prolific in practical results. British and Dominion statesmen met in an atmosphere of mutual admiration and social festivity, debated such matters of Imperial concern as uniformity of legislation in regard to patents or naturalisation, the establishment of a State-owned cable across the Atlantic or the possibility of an 'all red route' to Australia, and went their way—to assemble again a few

<sup>1</sup> *Can. H. of C. Debates*, June 27, 1923, p. 4464.

<sup>2</sup> The early meetings were called Colonial Conferences; this was changed in 1907 to 'Imperial' Conference.

<sup>3</sup> A subsidiary Conference was held at Ottawa in 1894.

<sup>4</sup> In 1902 it was declared desirable to hold meetings every four years, and this period was definitely fixed in 1907, *infra*, Section I, B. 2 (a), pp. 152-3.

years later, wondering a little, it may be, at the paucity of the actual harvest that had rewarded their co-operative sowing.<sup>1</sup>

The chief topics engaging the attention of the pre-War Conferences were reciprocal tariff preferences, Imperial federation, and Empire defence—each of which furnished a fighting-ground for the conflicting forces of nationalism and centralization. In no case was the centralizing movement successful. Moderate tariff preferences were granted to the United Kingdom by different Dominions, but the free trade policy of the mother country made reciprocal preferences impossible. Imperial federation was frequently discussed and at times resolutely fostered by the Imperial Government, but it met with a cold reception by most of the Dominions, who saw in federation, or any modified form of it, a scheme of government whereby they would exchange their existing autonomy for a feeble voice in policies about which for the most part they were not concerned. Empire defence received a more sympathetic hearing, though some of the Dominions held the comfortable (and frugal) theory that they were best contributing to the common defence by developing their own territory and its natural resources. The British Government, beginning with the first Conference, had steadily advocated a policy of colonial contributions to the Imperial forces, and these suggestions had met with a limited response in 1887 and 1897. At the Conference of 1902 Mr. Chamberlain, relying on the support which had been given during the South African War, asked both for colonial troops, who could be made available for Imperial service, and for subsidies for the Imperial navy.

The weary Titan [said he impressively] staggers under the too vast orb of its fate. We have borne the burden for many years. We think that it is time that our children should assist us to support it, and whenever you make the request to us, be very sure that we shall hasten gladly to call you to our councils. If you are prepared at any time to take any share, any proportionate share, in the burdens of the Empire, we are prepared to meet you with any proposal for giving to you a corresponding voice in the policy of the Empire.<sup>2</sup>

There was no response to the request for troops, but all the colonies, except Canada, agreed to make monetary contribu-

<sup>1</sup> June, 1921, p. 536. Cf. *infra*, Section I, B. 1, pp. 147-52, for a discussion of the general problem of Empire co-operation.

<sup>2</sup> *Parl. Papers (G. Britan)*, 1902, Cd. 1299, p. 4.

tions for the navy. Canada refused on the grounds that such contributions were not in accord with self-government (the offer of a seat in Empire councils seems to have been ignored), and that she was considering the establishment of a navy of her own. The ensuing years saw the Canadian idea of a local naval unit grow in favour, and a subsidiary Conference of Defence formally endorsed it in 1909. In the same year Canada and Australia established their own navies, and New Zealand followed suit in 1913. The contributory scheme was temporarily revived by the proposals of the Canadian Government in 1912-13, but even under this plan the ships were to remain the property of the Dominion and were to be restored to the Canadian Naval Service if she so requested.

The growth of Dominion armaments was naturally linked up with the foreign policies of the Empire, and the movement towards Dominion navies was both the cause and effect of a budding interest regarding foreign affairs. Australia and New Zealand were particularly vulnerable and consequently showed more concern than Canada, who had the protection of both geography and the Monroe Doctrine. The obvious forum for the discussion of foreign policies was the Imperial Conference, but for some years the British Government endeavoured to keep all such topics from the agenda. This repugnance disappeared, however, before the combined attack of Dominion importunity and the British desire for Dominion aid, made more necessary than in earlier years by Germany's avowed policy of increased armaments. The 1907 Conference discussed the dispute regarding the Newfoundland fisheries and the New Hebrides Convention, and the 1911 Conference considered the Declaration of London and the alliance with Japan. The latter meeting also passed a resolution to the effect that when the Imperial Government was preparing instructions for the negotiation of international agreements affecting the Dominion, the latter should be taken into consultation 'where time and opportunity and the subject matter permit'. Further, while the same Conference was in session,<sup>1</sup> the Dominion Prime Ministers were given for the first time a long and careful exposition of British foreign policy by Sir Edward Grey, an exceptional concession to the Dominions' awakening interest in foreign

<sup>1</sup> Before the Committee of Imperial Defence to which the Dominion Prime Ministers were summoned.

affairs.<sup>1</sup> Undue importance, however, should not be attached to what were in reality only the beginnings of a change; and it is significant that a speech of Mr. Asquith at the same Conference contained the warning statement that 'the responsibility of the Imperial Government subject to the Imperial Parliament in these matters (the conduct of foreign policy, the conclusion of treaties, the maintenance of peace, or the declaration of war) could not be shared'.<sup>2</sup> Nor, indeed, were the Dominion Prime Ministers united in demanding a voice on these subjects, as the speech of Sir Wilfrid Laurier at another session plainly indicated:

There are questions which seem to me to be eminently in the domain of the United Kingdom. We may give advice if our advice is sought; but if your advice is sought, or if you tender it, I do not think the United Kingdom can undertake to carry out this advice unless you are prepared to back that advice with all your strength, and take part in the war and insist upon having the rules carried out according to the manner in which you think the war should be carried out. We have taken the position in Canada that we do not think we are bound to take part in every war, and that our fleet may not be called upon in all cases, and, therefore, for my part, I think it is better under such circumstances to leave the negotiations of these regulations as to the way in which the war is to be carried on to the chief partner of the family, the one who has to bear the burden in part on some occasions, and the whole burden on perhaps other occasions.<sup>3</sup>

A few months later, however, the Laurier Government was defeated; and when the new Prime Minister, Mr. R. L. Borden, visited England in the summer of 1912, he repeatedly emphasized the desirability of the Dominions participating in both defence and foreign policy. Mr. Asquith, influenced no doubt by this changed attitude on the part of Canada and the enthusiastic response accorded in Britain to Mr. Borden's mild propaganda, made a statement on July 22, 1912, which substantially modified his position of a year before:

I will add—although I will not make any detailed statement upon that point at this moment—that side by side with this growing participation in the active burdens of Empire on the part of our

<sup>1</sup> Curiously enough, the members of the British Cabinet themselves had never been given such a careful survey of foreign affairs. Lloyd George, D., *War Memoirs*, i, p. 47.

<sup>2</sup> Cf. *infra*, Section I, B. 2 (b), p. 155.

<sup>3</sup> Minutes of Proceedings, Imperial Conference, 1911, *Parl. Papers* (G. Britain), 1911, Cd. 5745, p. 117.



Dominions there rests with us undoubtedly the duty of making such response as we can to their obviously reasonable appeal that they should be entitled to be heard in the determination of the policy and in the direction of Imperial affairs. . . . I do not say in what shape or by what machinery that great purpose is to be obtained. Arrangements like that cannot be made in a day. They must be the result of mature deliberation and thought.<sup>1</sup>

It was at this opportune time that Mr. Borden first made his proposal to the British Government to enlarge the functions of the Committee of Imperial Defence so that it might become a much more powerful agency of Empire co-operation.

The Committee of Imperial Defence had begun under Mr. Balfour as an informal advisory council to the Prime Minister, who was the only indispensable member and who could summon any one he wished to its meetings. It usually included the cabinet ministers concerned with questions of defence together with certain military and naval experts of the permanent staff. In 1907 the Imperial Conference, while endorsing the principle of an Imperial General Staff, passed a resolution embodying a practice which had already been established to the effect that any Dominion, wishing advice on questions of defence, might ask for the help of this Committee, and that at such times a representative from the Dominion concerned should be summoned to attend its meetings. The importance of the Committee of Imperial Defence was still further enhanced by the Conference of 1911, which used it as the means of giving the Dominions confidential information on foreign affairs. Sir Edward Grey's exposition of foreign policy, already mentioned, was given at a session of the Committee, and the tendency was to remove all discussions on foreign affairs from the Conference to the meetings of this body. This, from the Dominions' point of view, was a reactionary step, for while they met the United Kingdom on terms of equality in the Conference, they had no real standing in the Committee, the organization, personnel, and functions of which depended solely on the British Prime Minister. A greater use of the Committee, however, was decided upon, and a resolution was passed in the Committee that Dominion Ministers, appointed by their respective Governments, should in future be invited 'to attend meetings of the Committee of Imperial Defence when

<sup>1</sup> *British H. of C. Debates*, July 22, 1912, p. 872.

questions of naval and military defence affecting the oversea Dominions are under consideration'.

Mr. Borden's suggestion in 1912 was that if the Dominion representatives on the Committee of Imperial Defence were given permanent seats, they might be made to serve a double purpose: they could be used in consultation with the Committee on questions of defence affecting their respective countries, and they could also act as a channel of information for their home Governments on matters of foreign policy. The Dominions would thus receive more accurate and complete information, and would be able more effectively to place their own views on these matters before the Imperial Government. The Colonial Secretary welcomed the idea, and in December sent a dispatch to the Dominions embodying the suggestion and added that his Government, either through the Ministers or the Committee of Defence, would at all times be willing to keep any resident Minister fully informed on questions of Imperial policy.<sup>1</sup> But he was careful to point out that the Committee was, and must remain, an advisory body; and though it doubtless would have occasion to discuss foreign affairs, it could not take the formulation of policies out of the hands of the Imperial Cabinet.

The proposed innovation, however, was not very warmly received; and Australia, South Africa, and Newfoundland showed a desire to continue individual consultation and the existing procedure.<sup>2</sup> Nevertheless, a limited use was made of Dominion representation on the Committee in accordance with the resolution of 1911: Canadian Ministers attended some of its sessions in 1912, 1913, and 1914 to discuss questions of defence, and Ministers from New Zealand and South Africa did the same in 1913.

Such were, in outline, the chief Dominion powers in external affairs before the War. They were few in number, and had developed for the most part as natural and necessary extensions of the local powers which had been exercised for many years. The Dominions had acquired complete control in practice over their own commercial treaties, and they were steadily increasing their influence in regard to political treaties in which they had a real interest. They had also

<sup>1</sup> Cf. *infra*, Section I, B. 3, pp. 159-65.

<sup>2</sup> *Ibid.*

participated in several minor international conferences on technical subjects. But in more vital matters such as the conduct of foreign policy, the diplomatic relations with other countries, the declaration of war, the making of peace, the participation in important international conferences, the Dominions took as yet virtually no part. Acting through the Imperial Conferences and the Committee of Imperial Defence they might make representations to the Imperial Government and the latter might conceivably be influenced thereby, but it was not at all likely that these representations would modify materially the conduct of Imperial foreign policy.

Unfortunately for the Imperialist cause, the past history of British diplomacy had created much hostility and little gratitude in the Dominions; the evils were remembered, the merits soon forgotten. It was repeatedly contended that Dominion interests had been sacrificed by Great Britain either because of Empire wars which primarily or entirely affected the mother country, or because of the British willingness to make concessions to foreign countries regardless of the rights and demands of the Dominion concerned.<sup>1</sup> Canada, for example, had been twice at war with the United States, yet on neither occasion, directly or indirectly, had she been the cause of the conflict. An even more fruitful source of dissatisfaction in Canada was the series of diplomatic settlements with the United States, the great number of which, it was alleged, had sacrificed Canadian claims in order to placate her neighbour and increase the latter's friendliness towards Great Britain.<sup>2</sup> No one seems to have been troubled by the embarrassing reflection that without British support the lot of the Dominion would probably have been much worse; and although leaders like Sir Wilfrid Laurier were frequently heard denouncing British diplomacy, they were singularly reluctant to assume more responsibility themselves. The complaints, as one critic states, were 'not intended to overthrow the existing basis of relationship, but merely to change it, perhaps, in certain respects and, more specifically, to infuse greater zeal for local interests into the conduct of the Home Government'.<sup>3</sup> Nor was Canada the only dissatisfied Dominion. Australia and New Zealand had had ambitions to acquire territories in the Pacific and had

<sup>1</sup> *Infra*, Section I, A. 1, pp. 135-40.

<sup>2</sup> *Ibid.*

<sup>3</sup> Dewey, A. G., *The Dominions and Diplomacy*, i, p. 187. Cf. *ibid.* i, pp. 187-99.

each taken definite steps to annex them, only to have their efforts negated by the action or inaction of the Imperial Government. Finally, when the Convention with France regarding the New Hebrides was concluded in 1906 without consulting the Southern Dominions, Australia brought the matter before the Imperial Conference and made a formal protest against the continued sacrifice of her interests and those of New Zealand to the exigencies of Imperial diplomacy.

On the other hand, it would be quite inaccurate to think of the Dominions before the War as fretting under the hardships of Imperial control in foreign affairs. Although it is true that they were at times somewhat uneasy regarding their subordination they did not often resent or object to it, for they realized that greater powers would have to be accompanied by equivalent obligations. To advise, with the expectation of having the advice followed, implied taking the responsibility, and on this both Mr. Asquith and Sir Wilfrid Laurier agreed: the former was unwilling to relinquish the responsibility of the Imperial Government, the latter was unwilling to assume it on behalf of his Dominion. Moreover, the Dominions were able to reap still further advantages from their aloof position. Inasmuch as they had no control over foreign policy, they were not compelled to spend money for defence unless they wished to do so, and they also preserved the right to participate actively in a war only when they themselves thought it necessary. 'When Great Britain is at war, Canada is at war' was the statement of Laurier, but he was careful to add the important proviso that the Parliament of Canada would determine the extent of the Canadian participation. His unvarying position was that the Dominions should avoid commitments that would automatically involve them in Imperial policies or Imperial wars; and he was quite willing to take no initiative, to block positive proposals at the Imperial Conferences, and to allow matters to take their natural course rather than pledge Canada to a policy which she might later regret. Laurier's foresight thus greatly simplified the task of Dominion nationalism in subsequent years, inasmuch as the latter was able to find expression without first having to cast off additional restraints and impediments which the Dominions had voluntarily assumed in the past.<sup>1</sup>

<sup>1</sup> For Dominion attitudes on Imperial affairs see *infra*, Section I, A, pp. 135-47.

In no Dominion was this independent attitude entirely the result of weighing one advantage against another, and this was even more true in Canada where public feeling on this subject was greatly affected by a large number of other influences. The strength of French-Canadian nationalism, a distrust of British diplomacy following the Alaska Boundary Award, a jealous regard for the principles of responsible government, the knowledge that in the last resort Canada was protected by the Monroe Doctrine, the inherent suspicion of Mr. Joseph Chamberlain and his whole school of thought—all these were centrifugal forces which inevitably led to an increasing emphasis on Dominion autonomy and a shelving of Imperial responsibility. At times some of the other Dominions were not so sure of their ground and showed decided leanings towards Imperialism and the pooling of their powers and resources with the mother country; but more often they would swing in the opposite direction towards increased decentralization. This vacillation made the influence of Canada even more decisive than it naturally would have been, for during fifteen years the Canadian attitude remained constant. Laurier's Premiership from 1896 to 1911 covered the critical period of this development, and Laurier's policy proved, in the event, to be the one generally accepted. Sir Robert Borden, during his term of office before the War, had to some degree thrown his influence in the other direction, for he showed on several occasions a willingness to consider some scheme of joint control of foreign policies and defence.<sup>1</sup> But his emergency contribution to the British navy was killed by the Canadian Senate, and his proposals regarding an increased use of the Committee of Imperial Defence were coldly received by the other Dominions, with the net result that at the time of the declaration of war in 1914, decentralization was still the central fact in Empire government.

It was, nevertheless, generally realized that decentralization as it then existed was no permanent solution. Dominion autonomy raised few problems so long as it remained within its own boundaries, but it began to cause difficulties the moment it stepped outside. Little could be accomplished in the field of foreign affairs without sharing both power and responsibility with the Imperial Government; but this the

<sup>1</sup> *Can. H. of C. Debates*, Dec. 5, 1912, pp. 676-7.

Dominions were unwilling to do, for it meant the disappearance of self-government in the fullest sense. On the other hand, the Dominions could not long remain content with the status of an Imperial province. Their growing importance and national self-consciousness were beginning to make them somewhat restive in a position where they had little control of any kind over their relations with other countries, and where they were compelled to treat their inferiors in size and consequence as superiors in the international family of nations. Nor was the next alternative any more pleasing; for there was little desire in any of the Dominions for political independence from the British Empire. Fortunately, a solution did not have to be found at once, and in the end circumstances proved more successful than political theories in supplying an answer to the problem.

## II. THE WAR AND THE PEACE TREATY, 1914-20

The outbreak of the War and the events of the years immediately following contained no great constitutional surprises. The British declaration legally committed the whole Empire, although the Dominions had taken no part in the diplomacy which preceded the declaration, nor in the decision which irrevocably committed them to war. The Dominion Governments at once informed the Imperial Government that they would give their support; and when their Parliaments were summoned, they also pledged the assistance of their respective countries. The statement of Laurier had been fulfilled: Britain was at war, and the Dominions were at war, but the extent of the latter's participation had been determined by the action of their own Parliaments.

The decentralization which had been so characteristic within the Empire before the War was continued during the struggle. The Imperial Government made no demands for any kind of assistance from the Dominions, and the various proclamations, orders in council, and statutes which were made necessary by war conditions were drafted, whenever possible, so as to exclude the Dominions.<sup>1</sup> On one occasion, however, the Imperial Government exceeded its conventional powers and attempted to requisition Canadian ships; but the act was promptly protested by the Canadian Cabinet. Legal

<sup>1</sup> Keith, A. B., *War Government in the Dominions*, pp. 20-2.

power, the dispatch pointed out, must on no account be confused with constitutional right, and although the British Government might legally be able to requisition Canadian ships, these powers of the Crown were in practice to be exercised only upon the advice of the Dominion Government.<sup>1</sup>

At the outbreak of war Australia, Canada, and New Zealand decided to place their naval forces under the Admiralty,<sup>2</sup> and these therefore largely lost their identity in becoming part of the Imperial navy. But the emergency did not weaken materially the Dominion determination to keep their own fleets intact whenever possible. In 1917 the Imperial Conference passed a Resolution asking the Admiralty to prepare at the conclusion of the War a plan of naval defence for the Empire;<sup>3</sup> but when the Admiralty complied in 1918 with a Memorandum which suggested placing all Empire navies under one central naval authority composed of British and Dominion representatives, the Dominion Prime Ministers rejected the scheme as impracticable.<sup>4</sup>

Australia, South Africa, and New Zealand conducted their own military expeditions, occupied enemy territory, and, when successful, decided on the terms of capitulation without any interference from Great Britain. The other military forces of the Dominions were administered for the most part as units separate from the Imperial forces, although in the field they were subject to the direction of the British General Head-quarters.<sup>5</sup> The individuality of the Canadian establishment was aided to a considerable degree by the creation in London in 1916 of a Ministry of Overseas Military Forces, headed by a member of the Canadian Cabinet, who had charge of all Canadian activities and who remained responsible to the Dominion Parliament.

Formal co-operation between the different Empire Governments, however, fared badly at first. The Prime Minister of Australia urged the holding of the regular quadrennial Imperial Conference in 1915, but the Imperial Government, after consultation with the other Dominions, postponed the

<sup>1</sup> *Infra*, Section II, A. 1, pp. 169-70.

<sup>2</sup> This possibility had been foreseen and provided for under a naval agreement made in 1911 between the United Kingdom and Canada and Australia. Borden, Sir R. L., *Canadian Constitutional Studies*, p. 101.

<sup>3</sup> Cf. *infra*, Section II, A. 3 (b), p. 175.

<sup>4</sup> Cf. *infra*, Section II, A. 4, p. 177.

<sup>5</sup> *Can. H. of C. Debates*, Sept. 9, 1919, p. 124.

meeting indefinitely on the grounds of difficulty and inconvenience. The act was unfortunate but enlightening, for it showed how little importance the Imperial authorities attached to the meetings of the Conference, the products of which were described by the Colonial Secretary as being 'miscellaneous resolutions, protracted sittings, shorthand reports, and resulting Blue Books'.<sup>1</sup> The British Government promised, however, that when the time came to discuss the terms of peace, the Dominion Prime Ministers would be fully consulted. On the other hand, some measure of co-operation was obtained through the willingness of the Imperial Government to keep the Dominions informed in accordance with the offer made in December 1912. Throughout the entire war Canada had a resident minister in London either as Minister of Overseas Military Forces or as Acting High Commissioner, and he formed a most useful link between the two Governments. An unprecedented consultation took place when Sir Robert Borden attended a meeting of the British Cabinet in 1915, and a similar invitation was extended to the Prime Minister of Australia when he visited London in the following year. A further departure occurred in 1916 when Canada and Australia were represented by their own Ministers at the Economic Conference of the Allies at Paris.<sup>2</sup>

These slight efforts to attain formal Empire co-operation served but to show how feeble a thing Empire co-operation in the constitutional sense really was. The sentiment appeared to be present, but the governmental machinery to achieve it was unmistakably absent. The self-governing Dominions were playing a large part in the War and would doubtless expect to play a large part in the formulation of peace, but they were legally nothing more than subordinate members of a great Empire with no constitutional standing at all commensurate with their importance. The position of the Dominions had seemed unsatisfactory before the outbreak of war, but as time went on the inadequacy of Empire organization was becoming increasingly apparent. The problem demanded a solution, and a solution, logically stated and neatly documented, was opportunely at hand and ready to be applied. It was the 1916 version of imperial federation.

<sup>1</sup> *Infra*, Section II, A. 3 (a), p. 174.

<sup>2</sup> Keith, A. B., *War Government in the Dominions*, pp. 24-5.



The chief advocates of this latest federation movement were a group of brilliant students throughout the Empire headed by Mr. Lionel Curtis, editor of *The Round Table*, a quarterly devoted to a study of constitutional problems. They regarded the War as having unequivocally proved their contentions both as to the intolerable position of the Dominions in foreign affairs and as to the desirability of imperial federation as a cure. The Imperial Conferences, it was pointed out, were quite inadequate, for they did not function continuously nor could they be used on the occasions when the need for them was most urgent. The Dominions had had no control over foreign policy and were consequently plunged into war without any preliminary consultation; they were actively participating in the War, and yet they had virtually no voice in its prosecution; they would come to the conclusion of the struggle, and again they would be helpless, for while they might be consulted, the only responsible representatives of the Empire and the only ones competent to speak authoritatively were the members of the Imperial Cabinet.

The Dominions [wrote Mr. Curtis in 1916] have seen themselves committed to war by a Government responsible only to the people of the British Isles. And this experience is destined to be completed, for they will see themselves committed to peace by ministers who are not responsible to themselves. . . . Their representatives will not be admitted to the conference at which that peace is finally made. The plenipotentiary who will go to it will be a minister responsible only to the people of the British Isles through the parliament they elect. Its responsibility for that minister and for his policy cannot be shared with the parliaments of the Dominions, and the responsibility of British ministers for foreign affairs cannot be shared at the conference with ministers from the Dominions. It is too late to alter that situation now. The constitution of the Commonwealth cannot be recast or even considered by ministers in the throes of a struggle like this. The policy to be pursued at the peace conference must be decided by the British Government. It cannot be made to depend upon the unanimous agreement of the Dominion Governments.<sup>1</sup>

No Dominion, it was contended, would allow itself to be placed a second time in so humiliating a position; but fortunately a repetition could easily be avoided. A government could be created in the form of an Empire Parliament, which would have jurisdiction over foreign affairs, defence, and the

<sup>1</sup> Curtis, Lionel, *The Problem of the Commonwealth*, pp. 112-14.

necessary finance, led by an executive responsible to it. Local self-government would thus be united with federal control over subjects of common interest. The only other alternative was independence, and this, if past events were any criterion, was unthinkable. The spectacle of the Dominions hastening to the aid of the mother country and giving unhesitatingly their most generous support could mean only one thing: that the ties of affection were still strong and that there was no desire on the part of the Dominions that they should be materially weakened. Nationalism and its twin danger, separatism, had been decisively defeated by the common patriotism engendered by war.

This choice which faced the Dominions in the immediate future was what the federationists called, with ill-concealed joy in their voices, 'the brutal dilemma'. The Dominions could not be expected to rest content with their existing constitutional position; they must break farther apart or come closer together, they must cut the painter or climb aboard the imperial boat. The choice did not appear at all difficult to make, indeed, the answer seemed to have been already anticipated in that remarkable display of loyalty in 1914 and the succeeding years.

But the British Empire has always been governed primarily by facts and precedents and secondarily by theories, and this instance was to prove no exception. The War, which had apparently been strengthening the cause of federation, was beginning to set in motion a train of events which would in time lead the Empire far from the destination chosen by the Imperialists. The first of the long series was the creation of the Imperial War Cabinet and the summoning of the Imperial War Conference in 1917.

In December 1916 the Asquith Government resigned, and Mr. Lloyd George became Prime Minister of Great Britain. He immediately reorganized the whole executive branch of the government with the single aim of securing the more effective prosecution of the War. Two bodies were chiefly affected, the Cabinet and the War Committee, which was the successor of the old Committee of Imperial Defence. Both of these had become so large and so ponderous<sup>1</sup> that they were ill suited for the making of prompt decisions and

<sup>1</sup> The old Cabinet had twenty-three members, the War Committee about the same number.

the carrying on of executive work. The reorganization increased the number of government departments so as to provide greater specialization, while it transferred the work of the old Cabinet and of the War Committee to the hands of a newly created body, the War Cabinet. The War Cabinet was composed of five<sup>1</sup> members of the Government, of whom only one had any other post, namely, Mr. Bonar Law, who was both Chancellor of the Exchequer and spokesman for the Government in the House of Commons. The other members rarely sat in Parliament, but devoted their entire time to the formulation of policy and to the co-ordination of the work of the different departments of government. The War Cabinet consulted continually with technical experts and individual ministers who, however, had no more than an advisory voice in the decisions which were made, and who consequently could not be held responsible for them. The War Cabinet was the only body which could be held accountable, and this in practice was reduced to a nullity, for Parliament was willing to submit for the sake of the war to the autocratic rule of the committee of five.<sup>2</sup>

A week after Mr. Lloyd George took office, he made another important departure, inspired, it may be, by the recent precedents of inviting the Canadian and Australian Prime Ministers to attend meetings of the British Cabinet and by the earlier example of the Committee of Imperial Defence. Representatives from the Dominions and India were asked 'to attend a series of special and continuous meetings of the War Cabinet in order to consider urgent questions affecting the prosecution of the war, the possible conditions on which, in agreement with our Allies, we could agree to its termination, and the problems which will then immediately arise'. It was also stated that for the purpose of these meetings the Dominion Prime Ministers would be members of the War Cabinet. 'It was important not to announce it as a regular Imperial Conference', writes Mr. Lloyd George, 'since the constitution of such a conference was already firmly defined by precedent, and what was desired was something definitely simpler and more direct in character.'<sup>3</sup> The

<sup>1</sup> The number was later increased to six, and was occasionally seven. The original five were: Mr. Lloyd George, Mr. Bonar Law, Earl Curzon, Viscount Milner, and Mr. Arthur Henderson.

<sup>2</sup> The War Cabinet: Report for the Year 1917, *Parl. Papers (G. Britain)*, 1918, Cd. 9005, pp. 1-4.

<sup>3</sup> Lloyd George, *D. War Memoirs*, iv, p. 1735.

invitation was accepted by all, but Australia was unable to send representatives because of an impending general election.

The first meeting of the Imperial War Cabinet, as it was called, was held on March 20, 1917. It was composed of the five members of the British War Cabinet, the Dominion Prime Ministers or their plenipotentiaries, a representative of India, and the Colonial Secretary, who spoke for the Crown Colonies and Protectorates.

We meet there [said Sir Robert Borden on April 3, 1917] on terms of equality under the presidency of the first Minister of the United Kingdom; we meet there as equals; he is *primus inter pares*. Ministers from six nations sit around the council board, all of them responsible to their respective Parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government and the responsibility of its Ministers to their own electorate.<sup>1</sup>

The Imperial War Cabinet was thus an entirely new body, unknown to the constitution of Great Britain or the Empire, somewhat different in personnel and very different in function from the old Imperial Conference. It did not spend its time in debate over vague resolutions; it was engaged in executive work, and its chief task was making decisions concerning the conduct of the war and the larger issues of foreign policy. It took complete jurisdiction over those subjects which Mr. Asquith in 1911 had declared could not be shared with the Dominions and which were to remain the exclusive province of the Imperial Government.

The Crown at present [stated Sir Robert Borden in 1917] acts upon the advice of a Cabinet in all Imperial matters, which includes not only Ministers responsible to the British Parliament but also those responsible to the Parliaments and Governments of the respective Dominions so far as they are represented here.<sup>2</sup>

For the first and only time in history [wrote the Prime Minister of Australia] one may truly say that the Empire was not governed from Downing Street. The 1918-19 Cabinet not only dealt with a wider range of problems than any other, but, because of the long time it sat,

<sup>1</sup> *Infra*, Section II, A. 2, pp. 172-3.

<sup>2</sup> Report of Imperial War Conference, 1917, *Parl. Papers* (G. Britain), 1917, Cd. 8566, p. 59. Cf. also *Can. H. of C. Debates*, April 1, 1919, pp. 1044-70; *ibid.*, May 18, 1917, pp. 1525-36; *infra*, Section II, A. 2, pp. 171-4.

its control of the Empire's policy was more direct. . . . The 1918-19 Cabinet not only laid down general principles but applied them; that is to say, instead of tendering advice, the Dominion representatives shared, on terms of perfect equality with Britain, the actual government of the Empire.<sup>1</sup>

The functions of this newly created body were not, however, identical with those of an ordinary cabinet; they were practically, though not directly, executive. The Imperial War Cabinet discussed and decided all matters of Empire concern, while leaving the actual executive orders to be issued—in accordance with its decisions—by the several Governments affected. There could be, in the nature of the case, no collective responsibility, and the use of the term 'cabinet' was therefore somewhat misleading. It was more correct, as Sir Robert Borden explained, to call it 'a cabinet of Governments rather than of Ministers'. Its success as an executive body and the great reason why the question of responsibility was never a serious one is found in the political conditions of the time. Responsibility of Ministers in any real sense was held in abeyance in all Parliaments and the decisions of the individual Governments were rarely called into question. It is probable also that the Imperial War Cabinet itself was able to attain unanimity largely because of the pressure of the War and the willingness of all members to make concessions and compromises that in other times would be unattainable.

In addition to the Imperial War Cabinet another body was convened known as the Imperial War Conference, holding its sessions on alternate days with the Imperial Cabinet. It was presided over by the Colonial Secretary, and was composed of a number of Ministers from the United Kingdom (other than those on the British War Cabinet), and all the overseas representatives. This body corresponded closely to the former Imperial Conferences except that it contained representatives from India<sup>2</sup> and did not include the British Prime Minister. It discussed various questions not connected with the War, and war problems of minor importance.

Three ministerial groups were therefore functioning in London at one time—the British War Cabinet, the Imperial

<sup>1</sup> Hughes, W. M., *The Splendid Adventure*, p. 57. Cf. also Lloyd George, D., *War Memoirs*, iv, pp. 1747-66.

<sup>2</sup> Resolution VII of the Imperial War Conference, 1917, stated that India should be represented at future Conferences, *infra*, Section II, A. 3 (b), p. 175.

War Cabinet, and the Imperial War Conference. The first was concerned with purely British questions of all kinds; the second, with Empire problems of great moment connected for the most part with the War; the third, with Empire problems of a more general nature. The line of demarcation was not distinct, and a subject frequently came before more than one of these bodies.

The Imperial War Conference of 1917 will be remembered in constitutional history for one outstanding act: it passed the famous Resolution IX dealing with the existing and future government of the Empire. The resolution, which was largely the result of the labours of Sir Robert Borden and General Smuts, was endorsed by the Conference without a dissenting voice. It read as follows:

The Imperial War Conference are of opinion that the readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the war, and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities.

They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine.<sup>1</sup>

Resolution IX is unquestionably one of the landmarks in Empire history, for it was the formal recognition of the fact that the Dominions had entered upon a new stage in constitutional development.

It looked Mr. Curtis' renowned dilemma in the eye [writes Mr. John W. Dafoe] and brushed it out of the path. It excluded the idea of formal federation. . . . Equally it excluded the idea of separation. And it repudiated, at the same time, the idea of the continued subordination of the Dominions in external affairs, thus attempting, from the viewpoint of Mr. Curtis and the Round Tablers, the unattainable.<sup>2</sup>

<sup>1</sup> Ibid.

<sup>2</sup> 'The Rise of the Commonwealth', *Manitoba Free Press*, June 6, 1925.

The cordial reception given to Resolution IX, however, can probably be attributed in no small measure to the fact that it was both ambiguous and incomplete. It demanded, for example, an 'adequate voice in foreign policy'. But what was to be considered 'adequate'? What steps were necessary to secure a 'full recognition' of the Dominions 'as autonomous nations of an Imperial Commonwealth'? What was meant by 'effective' arrangements, and what were to be considered 'important' matters? The words 'concerted action' certainly suggested a common foreign policy, yet the clause 'in all important matters of common Imperial concern' seemed to limit it to a definite field and implied that in other matters there might be separate foreign policies for each part of the Empire. Both Imperialist and Nationalist were thus able to find solace within these hospitable phrases. Moreover, the Resolution dealt with only one side of the problem, inasmuch as it left untouched the future standing of the Dominions in relation to nations outside the British Commonwealth.

Nothing was done [writes Mr. Dafoe in the article already quoted] to explain to the world that the Dominions had ceased to be diplomatic nonentities and had become 'autonomous nations of an Imperial Commonwealth' with corresponding powers and responsibilities. Presumably this was not absent from the minds of the statesmen who were responsible for the constitutional resolution; but they left it over for the consideration of the constitutional conference for the calling of which they provided (but which has never been summoned). This conference was to meet after the coming of peace; they did not foresee that in the very process of making peace the question of the international status of these 'autonomous nations' was certain to arise. This curious overlooking of what, it seems, should have been an obvious fact made inevitable the subsequent difference of view between the Dominions and the British Government over the question of Dominion representation at the Peace Conference; and the somewhat serious clash of opinion over the same question in the international body at Paris which gave the Peace Conference its provisional organization.<sup>1</sup>

In spite of these ambiguities and omissions—many of which may have been necessary at that time—it would be difficult to over-emphasize the importance of Resolution IX; for one could easily build up a plausible and perhaps a true case to prove that every step in the subsequent constitutional

<sup>1</sup> 'The Rise of the Commonwealth', *Manitoba Free Press*, June 6, 1925.

development of the imperial and foreign relations of the Dominions has been the natural outcome of this resolution. It omitted much, but it stated more. Even a narrow interpretation of the Resolution conceded far more than was thought possible in 1914, and if the ambiguous phrases were generously read, it conceded everything, short of independence, that the Dominions could conceivably ask.

Whether such a departure in Empire affairs would necessitate the creation of some new governing body to provide the means for 'continuous consultation' was left to the later constitutional conference to decide. But the Imperial War Conference of 1917 could not have been unmindful of the fact that such a body was already at work as a going concern. By an odd coincidence—if it were a coincidence—the Imperial War Cabinet was at the moment actually performing functions very similar to those contemplated in the Resolution, and subsequent events did little to dispel the suspicion that it was quite willing to offer its services to the Empire for a role which its own members had helped to create. On May 17 Mr. Lloyd George announced to the British House of Commons that the Imperial War Cabinet at its last session had decided that its meetings should take place at least once a year, and that it should be composed of the British Prime Minister and those colleagues whose work was especially concerned with Imperial affairs, the Prime Ministers of the Dominions or their specially accredited representatives, and a member appointed by the Government of India.<sup>1</sup>

Thus at the very moment when the Dominions were asserting their rights as fully autonomous nations, there had appeared—due to the exigencies of war—a body which seemed capable of reconciling Dominion ambitions with Empire unity. The Dominions through this instrument could have an active share in forming foreign policy; all self-governing parts of the Empire could be on a nominal equality; and a centralized executive might, working through separate legislatures, be able to perform all the really necessary functions. Here was a piece of machinery which would provide the much-needed Empire government foreshadowed by Resolution IX, and which, with a little tinkering, might

<sup>1</sup> After the Imperial War Cabinet had ended its sittings General Smuts attended the meetings of the British War Cabinet. His position was an anomalous one as he was not there as the representative of South Africa, neither was he officially a member of the British War Cabinet.



be made to serve for years to come. 'We hope', said the British Prime Minister, voicing the general British approval, 'that the holding of an annual Imperial Cabinet to discuss foreign affairs and other aspects of Imperial policy will become an accepted convention of the British Constitution.'<sup>1</sup>

In 1918 the Imperial War Cabinet met again. Acting on a suggestion of the Imperial War Conference which was also in session, it took a further step which aimed at securing the 'continuous' element in the consultation which had hitherto been lacking. In addition to a resolution providing that the Dominion Prime Ministers might communicate directly with the Prime Minister of the United Kingdom,<sup>2</sup> it passed the following:

In order to secure continuity in the work of the Imperial War Cabinet, and a permanent means of consultation during the War on the more important questions of common interest, the Prime Minister of each Dominion has the right to nominate a Cabinet Minister, either as a resident or visitor in London, to represent him at meetings of the Imperial War Cabinet to be held regularly between the plenary sessions.<sup>3</sup>

The wording indicates that this was intended to be a war measure; but it seems reasonable to assume that the Cabinet was not averse to continuing the practice, if successful, after the peace. It was a return with a difference to the suggestion made in December 1912 regarding the use by the Dominions of representatives in London, who were to be kept fully informed of the developments in British foreign policy. But whereas in 1912 the Dominion representatives would probably have been little more than recipients of information, in 1918 they were expected to take a very real part in the deliberations and decisions of the War Cabinet. In the event, however, only General Smuts and Premier Hughes availed themselves of the privilege of attending meetings after the adjournment of the 1918 regular session, for the coming of the armistice led to the full Imperial War Cabinet being re-convened in November of the same year.

The incidents which centred about the Dominions' relation to the various peace treaties were of surpassing impor-

<sup>1</sup> *Infra*, Section II, A. 2, pp. 173-4.

<sup>2</sup> This direct communication had already been established in practice between the Canadian and British Prime Ministers. Borden, Sir R. L., *Canadian Constitutional Studies*, pp. 108-9.

<sup>3</sup> *Infra*, Section II, A. 3 (c), pp. 176-7.

tance in the constitutional development of the Empire. They marked the triumphant conclusion of one period, and, less obviously, the quiet beginnings of another. The autonomy of the Dominions was openly vindicated, and yet even at the moment of that vindication the first steps in the next progress were being taken.

Resolution IX had stated the changed relations of the self-governing parts of the Empire to one another; the Peace Treaty emphasized the international aspects of that development and brought to the attention of other countries the altered position of the Dominions. Yet the Imperial Commonwealth of Resolution IX was not quite the same, either in form or in spirit, as the Imperial Commonwealth of the Peace Treaty. Hitherto the events of the War had appeared to lead steadily towards an Imperialistic goal: the Dominions had asserted their equality of status, but had been willing to pool their resources and their councils with the mother country. The future seemed bright for some form of centralized co-operation—probably an executive council which would guide foreign policy and would acknowledge a piecemeal responsibility to six different legislatures. But the moment hostilities ceased, the Dominions began to assert themselves more vigorously and demand further individual recognition—an apparent change of front, but one which was quite in accord with recent developments in their respective countries. For the War had brought out a strange sort of double patriotism overseas: it had undoubtedly heightened the affection for Great Britain, but it had had an even more marked effect in developing a strong national consciousness within the Dominions themselves. These two sentiments were at times almost indistinguishable, and at times conflicting, but as the War progressed the nationalistic feeling became stronger, more confident, and more articulate. The result was that at the end of the War the Dominions were not entirely satisfied with the position gained in 1917; they were not willing to depend on the Imperial War Cabinet to express their wishes at the Peace Conference, but demanded a more explicit form of representation. The idea of an Imperial executive had for the first time since its inception been found insufficient, and a slight breach was made in the carefully guarded diplomatic unity of the Empire. The subsequent procedure in signing and ratifying the various

treaties and the admission of the Dominions to the League of Nations were additional signs that a new movement towards decentralization had begun.

The promise of the Imperial Government, announced on April 14, 1915, that it would discuss the terms of peace with the Dominions, had been partially carried out at meetings of the Imperial War Cabinet;<sup>1</sup> but this body was not in session when the final collapse of the enemy occurred, and Mr. Hughes was the only Dominion Prime Minister then in England. It was obviously impossible to call a special meeting of the Imperial War Cabinet before agreeing to President Wilson's Fourteen Points and the terms of the Armistice; but there was nothing to prevent the British Government from consulting Mr. Hughes, particularly as the pre-Armistice Conference had included representatives from such countries as Greece and Portugal. No such consultation, however, was attempted, and Mr. Hughes lost no time in voicing an indignant protest at this failure to implement the promises which had been given. The only reply made by the British Government was an unconvincing attempt to draw a distinction between the armistice agreement and the terms of peace.<sup>2</sup>

On October 27, 1918, Mr. Lloyd George had cabled the Dominion Governments asking them to send representatives at once to Europe for the purpose of attending meetings to determine the course to be taken by the Empire delegates to the Peace Conference. The suggestion was followed, and on November 20 the third session of the Imperial War Cabinet began. Sir Robert Borden, in replying to the invitation of Mr. Lloyd George, had already raised the question of Dominion representation at the Peace Conference, and he used the opportunity presented by the Imperial Cabinet meetings to press the Canadian claim 'very frankly and firmly'. He was supported by General Smuts and Mr. Hughes, although the Prime Minister of New Zealand and the Australian Cabinet as a whole were very doubtful as to the advisability of the proposal.<sup>3</sup>

The Supreme War Council of the Allies had provisionally

<sup>1</sup> Cf. Lloyd George, D., *War Memoirs*, iv, pp. 1749 et seq.; *infra*, Section II, A. 3 (a), p. 174.

<sup>2</sup> *London Times*, Nov. 8, 9, 1918; Keith, A. B., *War Government in the Dominions*, pp. 146-7; *infra*, Section II, B. 4, pp. 195-6.

<sup>3</sup> The correspondence and documents relating to Dominion representation at the Peace Conference are given below, Section II, B. 1, pp. 178-86.

decided that each of the Great Powers (the British Empire, the United States, France, Italy, and Japan) should be given five delegates; and the suggestion of the Imperial Government was that the five delegates from the British Empire should be chosen day by day, according to the subjects before the Conference, from a panel composed of representatives of the United Kingdom, the Dominions, and India, i.e. from what would be, substantially, the Imperial War Cabinet. Such a scheme would probably have resulted in the Dominions and India obtaining but one representative, for the political situation in Britain was such that four places on the delegation were virtually filled in advance by the British Coalition Government. To this proposal the Dominion Governments, led by Sir Robert Borden, would not agree. They contended that their standing at the Conference should depend in a large measure on war efforts, that the Dominions were entitled to the same representation as Belgium and the small allied nations; and that inasmuch as it was proposed to admit the latter only when their special interests were being considered, it was very desirable also to allow the Dominions and India to share in choosing the five delegates from the Empire panel. For six weeks the Imperial War Cabinet discussed the terms of peace and the question of representation, and the proposals of Sir Robert Borden regarding the latter were finally accepted. The Imperial War Cabinet, calling itself the British Empire Delegation, then left for Paris.

The path upon which the Dominions advanced to complete representation at the Peace Conference [writes Sir Robert Borden] was at times rough and thorny. Progress could only be achieved by unfaltering persistence and unceasing effort. . . . In our advance along that path the Dominion Ministers received from the British Prime Minister and his colleagues complete sympathy and unwavering support from first to last.<sup>1</sup>

The next step was to obtain the consent of the Supreme Council of the five Great Powers to the new proposals. This was at first refused due to the objections of the United States, whose representatives apparently felt unequal to the task of educating their people in some of the fine distinctions involved in the conception of Dominion status. The British

<sup>1</sup> Borden, Sir R. L., *Canada in the Commonwealth*, p. 94; *infra*, Section II, B. 1 and 3, pp. 178-86, 190-4.

Empire Delegation, however, stood firm on the essential justice of its contention; and the insistence of its members, coupled with the unescapable fact that the Dominions had put *more men in the field* than any but the major Powers, secured the recognition of the Dominions' demand. Canada, Australia, South Africa, and India obtained two delegates apiece, New Zealand, one;<sup>1</sup> while the British Empire Delegation (like all other groups) could act as a panel and choose the five representatives for the Empire. This last device enabled the Dominions and India to obtain, on occasion, an additional member. The original proposals of the British Empire Delegation were thus accepted, but they were somewhat affected by a subsequent act of the Supreme Council which gave Belgium and Serbia three members instead of two—a concession to which Canada took objection in a formal memorandum submitted to the Council. In one respect the Dominions and India were inferior to the small Powers, for under a rule of the Conference the former were not allowed to vote save as *part of the British Empire*, a restriction, however, which was of little consequence, inasmuch as formal voting was of no practical importance at any time during the proceedings.<sup>2</sup>

The Dominions therefore occupied at the Peace Conference, in Sir Robert Borden's words, 'a peculiarly effective position'. They had the same representation as the great number of the smaller nations. They had also special representation, when necessary, on the British Empire group of five. In actual practice, however, the latter privilege was of very little importance. The Council of Twenty-five never met, and its functions were discharged by a group made up of one or two members from each of the five Great Powers called respectively the Council of Five and the Council of Ten, or, later, the heads of the Governments of the British Empire, the United States, France, and Italy, called the Council of Four. These arrangements obviously left little room for the Dominions, although on several occasions Sir Robert Borden acted for the British Empire on the Council of Ten and took part in the work of the Council of Five and the Council of Four. Of much greater consequence was the right of the Dominions to sit on the British Empire Delegation.

<sup>1</sup> Newfoundland received no separate representation, but formed a part of the British Empire Delegation with a seat, when necessary, on the Empire group of five.

<sup>2</sup> Temperley, H. W. V., *A History of the Peace Conference of Paris*, vi, pp 345-6.

tion (i.e. the Imperial War Cabinet), which met almost every day and decided on the policy to be followed by its delegates. Representatives of the Dominions and India, moreover, had access to all papers and documents by virtue of their connexion with the British Empire Delegation, and they sat on a number of the Commissions through which the Conference did much of its work. It is thus no exaggeration to say that the British Dominions had greater privileges and played a more important part at the Conference than any of the minor Powers.<sup>1</sup>

The signing of the Peace Treaty gave the Dominions another opportunity to secure international recognition of their new standing. Sir Robert Borden again took the initiative, called the Dominion delegates together while at Paris, and secured their unanimous approval of his proposal that the Treaty should be so drafted that the Dominion representatives could sign separately in respect of their individual Governments, and that each Dominion Parliament should have the same power of reviewing the Treaty as was provided for other contracting parties.<sup>2</sup> This was a departure from the practice occasionally used in political treaties before the War of inserting a reservation providing for the adherence of the Dominions; it followed instead the precedent established in treaties of a technical nature.<sup>3</sup> The proposal further suggested that in signing the treaty under the general heading 'The British Empire', the plenipotentiaries for each part should sign under their respective sub-headings, such as the United Kingdom, Canada, Australia, &c. The plan was accepted by the British Empire Delegation and the Conference; but an important alteration was made when the signatures were appended to the Treaty. The plenipotentiaries for Great Britain signed for 'the United Kingdom of Great Britain and Ireland and the British Dominions beyond the Seas' while the Canadian plenipotentiaries signed for Canada, the Australian for Australia, &c., the inclusiveness of the first title thus binding the Dominions by a double signature and depriving them of the distinction of being full signatory Powers.<sup>4</sup> The same practice was followed in the

<sup>1</sup> *Infra*, Section II, B 3, pp. 190-4. An interesting comparison may be made between the speech of Sir Robert Borden on the Peace Treaty and that of Mr. Hughes. *Infra*, Section II, B. 3 and 4, pp. 190-9.

<sup>2</sup> *Infra*, Section II, B. 1, pp. 182-3.

<sup>3</sup> Cf. *supra*, pp. 7-8.

<sup>4</sup> The Imperial Conference of 1926 adopted the original scheme proposed by the Dominion representatives in 1919. *Infra*, pp. 106-7.

peace treaties with other enemy countries; but the Dominions did not sign the abortive Tripartite Treaty of Guarantee of June 1919, which reverted to the earlier form and stated that the Dominions were not to be bound by its term unless their Parliaments specifically expressed their desire to adhere.<sup>1</sup>

The signature by the Dominions necessitated the granting of Full Powers to the Dominion delegates. The Prime Minister of Canada, wishing to emphasize the constitutional equality of the Dominions and the United Kingdom, had the Powers issued by the King on the direct recommendation of the Canadian Privy Council. The exact position of the British Government in acting as the intermediary between the King and the Canadian Privy Council has been hotly debated;<sup>2</sup> but the position now generally accepted is that responsibility in such cases is assumed by the Dominion Government and that the act of the Imperial Minister is purely formal and mechanical.<sup>3</sup>

A natural consequence of separate signature was separate action in regard to ratification; and despite an ill-advised effort of the Colonial Secretary to secure Dominion acceptance without Parliamentary consent, each Dominion Parliament signified its approval of the Treaty. The Crown thereupon ratified it on behalf of the whole Empire. The same general procedure was followed in regard to peace treaties concluded with other enemy Powers.<sup>4</sup>

The seal of permanence was placed on the new international standing of the Dominions by their admission as members to the League of Nations. The original draft of the Covenant of the League did not provide for separate representation of the Dominions, partly because of opposition from foreign Powers, partly because the British Empire Delegation as a whole was reluctant to commit itself to a project which would tend to strengthen the centrifugal forces in the Empire. Canada and South Africa, however, objected to these proposals, and the final Covenant gave India and each Dominion signatory to the Treaty a seat in the Assembly

<sup>1</sup> The intention of the Treaty was to guarantee the defence of France in the event of German attack. Inasmuch as the United States did not ratify its part of the engagement the Treaty never became operative. Australia and New Zealand had signified their adherence, Canada and South Africa had abstained.

<sup>2</sup> Cp. Keith, A. B., *Responsible Government in the Dominions* (1928), ii, pp. 881-2; Baker, P. J. N., *The Present Juridical Status of the British Dominions in International Law*, pp. 74-5, 193-7.

<sup>3</sup> *Infra*, Section IV, E. 3, pp. 283-6; Section V, F. 1, pp. 421-2.

<sup>4</sup> *Infra*, Section II, B. 2, pp. 186-90.

in its own right. A possible ambiguity in Article IV led to Sir Robert Borden securing an interpretation from President Wilson, Mr. Lloyd George, and M. Clemenceau to the effect that the Dominions were eligible to be chosen as members of the League Council.<sup>1</sup> The International Labour Organization was also formed about the same time with a scheme of government closely analogous to that of the League. The original draft of this constitution had definitely excluded the Dominions from representation on the Governing Body; but the Canadian Prime Minister, by carrying the demands of the Dominions both to the Plenary Conference and to the Council of Four and pressing his case 'with the most resolute insistence', was able to secure the same privileges for the Dominions as they enjoyed under the League.<sup>2</sup>

Another act of the Conference which tended to enhance Dominion prestige was the creation of mandates, and three Dominions emerged from the deliberations as mandatory Powers. South Africa, Australia, and New Zealand were given mandates directly under the League, while Australia and New Zealand shared another with Great Britain.

The Peace Conference, therefore, so far as the British Empire was concerned, did much more than draw up a Peace Treaty, and the Dominion representatives might well look back upon their months in Paris as time well spent. They had not only secured an unparalleled recognition for their Governments at the Conference itself, but had succeeded in using the precedent thus established as the means of securing permanent recognition in international affairs.

A natural though not inevitable consequence of the events connected with the Peace Conference was the decision to grant Canada separate diplomatic representation at Washington. The Dominion had already furnished two precedents for such action by the creation of the International Joint Commission, which performed some functions frequently exercised by diplomatic agents, and by the establishment at Washington of the Canadian War Mission, a body which in 1918 and 1919 acted as the informal representative of the Canadian Government.<sup>3</sup> The increasing

<sup>1</sup> *Infra*, Section II, C, pp. 199-201. Section V, B, 1, p. 354.

<sup>2</sup> Borden, Sir R. L., *Canada in the Commonwealth*, p. 104; *infra*, Section II, B, 3, pp. 193-4.

<sup>3</sup> The Canadian War Mission did not represent the Canadian Government officially, but merely 'the Cabinet and the heads of departments' and was authorized to deal with the government departments and officials of the United States.



volume of Canadian business which fell to the lot of the British Ambassador at Washington and the circuitous manner in which all negotiations between Canada and the United States had to be conducted, made the appointment of a permanent Canadian agent almost imperative. The matter had been discussed with the British Government in 1917, 1918, and 1919, but had met with much opposition. It was felt that although such a plan might be highly useful and convenient, this double-headed representation was apt to lead to divergent policies and endanger the diplomatic unity of the Empire. A compromise solution was eventually found which, while permitting the Canadian Government to nominate and control its own Minister at Washington, yet placed him in close relation with the British Embassy. The Dominion representative was to have charge of all Canadian dealings with the American Government, and he was also to act in place of the British Ambassador in the latter's absence. 'This new arrangement', the official notice carefully stated, 'will not denote any departure from the principle of diplomatic unity of the British Empire.'<sup>1</sup>

There is no reason to believe that in taking this step the British Government intended to endorse the general principle of the diplomatic representation of the Dominions; the Canadian-American situation was unique, and an unusual remedy was therefore adopted. But a precedent had nevertheless been established; and by the time Canada had made a belated first appointment in 1926 the Irish Free State had already sent its Minister to Washington. No provision was made, however, for either the Irish or the Canadian Minister to act in place of the British Ambassador as had been suggested in 1920.<sup>2</sup> The Dominions had acquired another privilege, the right of legation.

### III. THE PERIOD OF TENTATIVE CENTRALIZATION

1920-2

This period extended from the Peace Treaty of Versailles to 1922, and was composed of two phases, one static, one dynamic. The first was marked chiefly by inaction, the

<sup>1</sup> Borden, Sir R. L., 'The British Commonwealth of Nations', *Yale Review*, July 1923, pp. 781-2; Keith, A. B., *War Government in the Dominions*, pp. 172-6; *Can. H. of C. Debates*, May 17, 1920, pp. 2442-75; April 21, 1921, pp. 2378-436; *infra*, Section II, D, p. 202.

<sup>2</sup> *Infra*, pp. 96-7, Section IV, I, pp. 314-15.

second by a revival of a centralized executive in the guise of the Imperial Peace Cabinet and an attempt to formulate and carry out a common foreign policy for the Empire.

The two years immediately following the Peace marked a pause in Empire constitutional development; and the one exceptional incident, the announcement that a Canadian Minister would be sent to the United States, was really not a product of this period but of an earlier movement begun in 1917. Constitutional issues had suddenly lost their urgency. South Africa retained an active interest in the possibilities of secession, but the remainder of the Dominions soon became absorbed in the work of reconstruction and internal development and were willing for the moment to allow questions of Imperial and foreign relations to fend for themselves. This was most noticeable in the rapid disintegration of the British Empire Delegation after the signing of the Versailles Treaty, and an increasing indifference and irresponsibility of the Dominions towards the remaining peace treaties and other issues left unsettled in Europe.<sup>1</sup> These were conveniently looked upon as Britain's tasks; and the Dominions either gave them only nominal attention or, what was perhaps more satisfactory, ignored them completely. The Imperial War Cabinet also passed out of existence after Versailles, and no effort was made to keep the channels of consultation and information open by the maintenance of ministerial representatives in London. Equally significant was the apathy in the Dominions on the question of naval defence. The Dominion Prime Ministers, when rejecting the Admiralty proposals in 1918,<sup>2</sup> had suggested that they would be pleased at a later date to receive visits from a highly qualified representative of the British navy to advise them in matters of this kind. Accordingly in 1919 Lord Jellicoe was sent around the world to study defence problems in the Dominions and to make recommendations for future naval policies within the terms of the Memorandum of Prime Ministers. Lord Jellicoe's proposals, however, evoked no enthusiastic response in any Dominion, and his repeated urging that the Dominions must be prepared to increase greatly their naval expenditures<sup>3</sup> was very coldly received indeed. Acutely conscious of

<sup>1</sup> *The Round Table*, Sept. 1924, p. 653.

<sup>2</sup> Cf. *supra*, p. 18; *infra*, Section II, A. 4, p. 177.

<sup>3</sup> 'I doubt', said Lord Jellicoe in New Zealand, 'if it will be possible for the estimates to be less than £1 per head of the population of the United Kingdom,

their heavy financial obligations and suffering from an over-indulgence in war and foreign affairs, the Dominions were unable to see any urgent need for loading their budgets with battleships at a time when the British navy was without a rival in the world.

This lack of national assertiveness arising from absorption in other matters was encouraged by the feeling in many parts of the Empire that the Dominions had gone far enough in insisting on their rights as autonomous units. The more conservative elements believed that the movement towards complete self-government had pushed ahead a little too rapidly, and that in the immediate future the wiser policy would be to make a few concessions in the matter of theoretical equality, and continue, for a time at least, to fill a minor place in the Empire. Further declarations of nationalism might easily lead to separation—a climax that was desired in very few quarters—and as time went on there was a growing disinclination to hold the Empire constitutional conference which was to have been convened 'as soon as possible after the cessation of hostilities'.

A suspension of agitation for constitutional change, whether caused by preoccupation or misgiving, was natural enough, but it held serious elements of danger, for it tended to confirm a misconception of Dominion aims which already existed in the minds of leading British statesmen. The latter, in spite of the experiences of the Peace Conference, were still astonishingly ignorant of the real strength and character of the national aspirations of the Dominions, and were inclined to think that the Dominions' chief desire was for greater influence and closer co-operation in Imperial affairs. They did not yet adequately comprehend the degree to which national feeling had displaced the Imperial patriotism of the early days of the War, and as a result they were doubtless too ready to accept any evidence which tended to corroborate their own opinions. Nor, in fact, could it be said that to an outside observer the trend of thought in the Dominions at this particular time was decisively hostile to centralized control; indeed, many signs pointed in the opposite direction. Canada, while she had just asserted her desire for a Minister

say, £45,000,000, and if the United Kingdom with its own heavy burden of debt can furnish £1 per head of its population, I hope and trust that the Dominions will find themselves able to do the same.' *The Round Table*, Dec. 1919, p. 216.

to the United States, seemed otherwise content; her change in Conservative Prime Ministers had foreshadowed no alteration in policy, while her Parliamentary Opposition, traditionally nationalistic, had been active in expressing its desire to return to the pre-war colonial position. South Africa had a general election in 1921; and although the right of secession had been the major issue of the campaign, the Government led by General Smuts was returned with an increased majority. Nationalist sentiment in the Antipodes was much less aggressive than in Canada or South Africa. New Zealand was, as ever, strongly Imperialistic in feeling, and its Government had repeatedly stated that it heartily disapproved of the Canadian experiment at Washington. Australian sentiment was more difficult to gauge, and the opinions of its Prime Minister, Mr. Hughes, more difficult still, but the Commonwealth seemed on the whole satisfied with existing conditions. There were signs, moreover, that both Australia and New Zealand, influenced in a large measure by the growing power of Japan in the Pacific, were becoming increasingly sympathetic towards any plan which would maintain close co-operation with Great Britain.<sup>1</sup>

The second and active phase of this period was closely linked with the first and was in some measure due to the slumber of Dominion nationalism which characterized the years 1919 to 1921. Its *motif* was the practical application of the terms of Resolution IX passed by the Imperial Conference of 1917.<sup>2</sup>

The divergent interpretations which might be placed on various clauses in Resolution IX had hitherto been of little consequence; no action had been taken on the Resolution except under abnormal war conditions, and the constitutional conference which was presumably to enlarge on its terms had not yet been held. The ambiguities had had, indeed, certain merits, for they had served to gloss over differences of opinion which might have caused serious dissension at a time when more important matters were pressing for attention. But if Resolution IX were to mean anything more than words on paper, some attempt had to be made to carry out its terms in practice, and this would inevitably be

<sup>1</sup> *Canadian Annual Review*, 1921, pp. 169-74; *The Round Table*, June 1921, pp. 695-701; *ibid.*, Sept. 1921, pp. 924-31; 'The Imperial Conference', *The New Statesman*, June 11, 1921, pp. 267-9.

<sup>2</sup> *Supra*, pp. 25-7.

accompanied by a conflict of views over its exact meaning. Naturally enough, each part of the Empire was inclined to read into the ambiguous clauses the meanings which most accurately reflected its own theories and desires. To many people in the Dominions the Resolution was a declaration of status little short of independence, while to the British it was simply a guarantee that the Dominions would be given an effective voice in matters of foreign policy and common Imperial concern.<sup>1</sup> Furthermore, the British Government was apparently not aware that the Dominions dissented from its interpretation—a misconception due in a large measure to the deceptive lull in nationalistic assertiveness in the two years following the Peace.

In these circumstances, the British proceeded to carry out what they believed, in all honesty, to be the spirit and letter of Resolution IX by calling into being a centralized executive based on the experience of the Empire during the War. The first step was the summoning of the Conference of Prime Ministers in 1921.

The invitation issued by the British Government in October 1920 read as follows:

The Dominions are invited to attend the Imperial Conference in June on the lines of the Imperial War Cabinet meetings which took place in 1917 and 1918, to deal with the many urgent problems of common interest which call for the co-ordination of policy and action by the different Governments of the Empire.<sup>2</sup>

More specifically, the agenda was to include a preparatory discussion regarding the constitutional conference mentioned in Resolution IX, a general review of foreign relations, the possible renewal of the Anglo-Japanese Alliance, and a number of other questions of common interest.<sup>3</sup>

The British Government thus offered as its practical translation of Resolution IX a centralized executive which followed closely the precedents set by the Imperial War Cabinets of 1917 and 1918. 'I have been anxious for some time past', said Mr. Lloyd George in 1920, 'to renew as soon as possible that personal consultation between Prime Ministers which produced such good results in the last two years

<sup>1</sup> Cf. *The Round Table*, March 1922, pp. 397-8.

<sup>2</sup> *Can. H. of C. Debates*, March 2, 1921, p. 467. Representatives from India were also invited. Unsuccessful attempts had been made to hold a meeting in 1920.

<sup>3</sup> *Ibid.*, April 25, 1921, pp. 2504-5.

of the War and at Paris.<sup>1</sup> Other utterances on the same subject made this intention even more clear. The Colonial Secretary, for example, spoke of the gathering as 'the first peace meeting of the Imperial Cabinet'. The Foreign Secretary referred to 'the summoning of an Imperial Cabinet, which became while it lasted a new and powerful organ of government, all its members being invested with the full authority and rank of Cabinet Ministers, and its decisions being not merely decisions of the British Government, but of the British Empire'.<sup>2</sup> *The Times*, in a number of semi-official announcements regarding the coming event, took care to point out that this was not to be merely another Imperial Conference but 'the beginning of a definite system of Empire Government in peace by an Imperial Peace Cabinet', endowed with executive as well as consultative powers, and forming 'a governing body for the Empire'.<sup>3</sup>

These views were, indeed, not at all surprising, for they were quite in keeping with the past British attitude, which had always expressed approval of the Imperial War Cabinet and had seen in it a likely instrument for future Empire government. The hopes of 1917 and 1918 were to be realized, Mr. Lloyd George was about to bring his early prophecies to fulfilment, and the first Supreme Council of the Commonwealth was to be given the position permanently. What could be more natural, what could be more in keeping with the so-called genius of British government, than to take this temporary body which had been created in haphazard fashion to fill a special need, and make it serve as a permanent executive for the whole Commonwealth? Thus a Special Correspondent of *The Times* wrote:

Is there to be an Imperial Peace Cabinet? . . . If so, then there is no doubt that the British Empire has made another of those stealthy and almost unrecognized marches into the dim country of political expedients and experiments which have been so characteristic of its past growth.

The question that has to be asked about the project of an Imperial Peace Cabinet is whether it corresponds to the practical genius of the British peoples. Is it, in other words, the product of their instinct for the highest development of self-government? If it is, then that

<sup>1</sup> *Br. H. of C. Debates*, Nov. 11, 1920, p. 1361.

<sup>2</sup> Quoted in *Canadian Annual Review*, 1921, p. 212.

<sup>3</sup> *Infra*, Section III, A. 1, pp. 203-4. For other British opinions, cf. *infra*, Section III, A. 5, pp. 212-17.

alone is sufficient to justify it in the eyes of the peoples whose relations with the non-British world will be regulated by it. If it is, and if it can be made to work, then no indictment of clumsiness or inefficiency in operation—short of complete breakdown—will lie against it. Judged by this test, the project of an Imperial Peace Cabinet occupies strong ground.<sup>1</sup>

Such a statement, however, savours too much of infallibility. It may well be that many innovations in British government have been successful despite the fact that they were the product of intelligent blundering, but in government as elsewhere there is always the possibility of playing one's luck too often. Yet on this occasion all the omens seemed favourable; and few could wonder at the confident optimism with which the advocates of centralization awaited the meeting of the Peace Cabinet. The affection and loyalty of the Dominions seemed beyond question, the earlier experiment of the Imperial War Cabinet had operated with conspicuous success, the assertion of Dominion individuality at the Peace Conference had not disturbed the smooth working of the British Empire Delegation, while nationalism, the greatest danger, had been notably silent during the past two years. All that remained to be done was to regularize and consolidate the system of Empire government which had providentially appeared during the War.

It was soon apparent, however, that these Imperial Cabinet proposals were regarded with some suspicion in the Dominions, and as the meeting of Prime Ministers drew near, the uneasiness grew more and more pronounced. In order to quiet the alarm General Smuts, shortly before leaving South Africa, announced that the gathering was 'no Cabinet . . . it has no executive functions. This body . . . is a merely consultative body.'<sup>2</sup> Mr. Meighen also took some trouble to explain at length to the Canadian Parliament that 'this is a conference, this is not an executive'; but he then proceeded to destroy the value of his assurance by the extraordinary assertion that 'even the War Cabinet was not an executive; it was a consultative body and nothing more'.<sup>3</sup> Grave misgivings as to the Cabinet's functions were expressed in the Australian House after Mr. Hughes's departure for London,<sup>4</sup>

<sup>1</sup> *London Times* (Weekly Edition), Nov. 19, 1920.

<sup>2</sup> *The Round Table*, Sept. 1921, p. 940.

<sup>3</sup> *Can. H. of C. Debates*, April 27, 1921, p. 2641.

<sup>4</sup> *London Times*, June 2, 1921.

and even Mr. Massey, who was an ardent advocate of the Imperial Cabinet, felt constrained to minimize the possibilities of this particular meeting acting as an executive body.<sup>1</sup> All these expressions of concern and disapproval reflected a genuine divergence of opinion from the British interpretation of Resolution IX and a misunderstanding throughout the Empire as to how its future government should be constituted. The Imperial Government, anxious to avoid a dispute and always careful of Dominion susceptibilities, quietly ceased using the objectionable title of Imperial Cabinet and officially named it a 'Conference of Prime Ministers'.

The exact standing of the Conference of Prime Ministers of 1921 is, indeed, still in some doubt, for it called itself a Conference and then proceeded to exercise much the same functions as the Imperial War Cabinet.<sup>2</sup> The members convened at times in plenary session after the fashion of the older Conferences, but in addition the group of Prime Ministers met by themselves in what were unmistakable revivals of the meetings of the War Cabinet. The most important part of the deliberations were concerned with foreign policy, particularly with the question of the renewal of the Anglo-Japanese Alliance, and although the report of these proceedings is extremely meagre, enough is given to indicate the nature of the discussions and the decisions which were taken.

Although officially no more than a Conference [reports *The Round Table*], its atmosphere, its demeanour, its record have been that of a Cabinet. It has given the public no account of its proceedings, but only the results. It has confined itself to proclaiming the conclusions of its discussions, and we are not told what part in those discussions was taken by the individual 'Prime Ministers and Representatives'. Most important of all, it has sat with members of the British Cabinet to determine British policy on 'Imperial and foreign questions of immediate urgency which arose in the course of the sittings'—we quote from its official report—and in that joint or collective capacity it has recommended action to the Sovereign like any ordinary Cabinet.<sup>3</sup>

An equally significant piece of evidence was its resolution on the overdue constitutional conference which stated that 'having regard to the constitutional developments since 1917, no advantage is to be gained by holding a constitutional conference'. This conclusion was susceptible of only one

<sup>1</sup> Ibid., May 7, 1921.

<sup>2</sup> Extracts from the Report appear below, Section III, A. 2, pp. 204-9.

<sup>3</sup> *The Round Table*, Sept. 1921, pp. 735-6.



interpretation, viz. that the uncertainty of 1917 had been finally dissipated by the reappearance of the Imperial Cabinet, and that a conference to draft a new scheme of government was therefore otiose. In order that the system, thus established and accepted, might be more successfully developed the Conference passed several general resolutions: (1) that the means of communication should be improved; (2) that meetings should be held, when possible, once a year; (3) that direct communication between Prime Ministers, as well as the right of the Dominions to have consulting Ministers in London, should still be maintained.<sup>1</sup>

The British interpretation of Resolution IX was thus accepted, and the continuance of an Imperial Cabinet, disguised as a Conference, was indirectly endorsed. The Prime Ministers of Australia and New Zealand supported the scheme with enthusiasm; General Smuts and Mr. Meighen apparently gave it a mild approval, tempered with several mental reservations. The British leaders had found a natural solution, a formula which seemed to suit every one and gave the Dominions the voice in the councils of Empire for which they had long been asking. Each nation was to retain its complete autonomy in local affairs, but its foreign policy was to find expression through a Council modelled on the Imperial War Cabinet. On this executive body all were equal, all shared in the discussion, all participated in the decisions.

There is no indication that this concession of nominal equality was accompanied by any understanding, express or implied, that the opinions and interests of Great Britain and the Dominions were to be given a varying weight depending upon the nature of the issue, although a suggestion along these lines had been made at the opening of the Conference by the Canadian Prime Minister. Mr. Meighen had then urged the acceptance of four principles as a guide in directing the Empire foreign policy of the future. (1) On questions which especially concerned the British Government, such as Palestine and the Middle East, the Dominions should be kept constantly informed. (2) On questions concerning the Empire as a whole the Dominions should be consulted. (3) Treaties and alliances should be entered into by Great Britain only after consultation with the Dominions, and these should be subject to the approval of the Dominion Parliaments.

<sup>1</sup> Cf. *infra*, Section III, A. 2, p. 209.

(4) On questions particularly the concern of a Dominion, such as those between Canada and the United States, the advice of the Dominion must be accepted as final.<sup>1</sup> Such an attempt to place the foreign policy of the Empire on a more definite basis and to allow for spheres of influence would not necessarily have been inconsistent with the Imperial Cabinet idea, but the suggestion apparently found little favour and was completely ignored in the official report. Some importance, however, must be attached to the fact that on at least one of the major issues of the Conference, the Anglo-Japanese Alliance, the delegates gave way to the Canadian insistence that the Alliance should not be renewed.

The outstanding feature of the Imperial Cabinet plan was that the diplomatic unity of the Empire was preserved intact. 'The discussions', said the Report of the Conference, 'revealed a unanimous opinion as to the main lines to be followed by British policy, and a deep conviction that the whole weight of the Empire should be concentrated behind a united understanding and common action in foreign affairs.'<sup>2</sup> There was to be one foreign policy for all, and that policy was to be revised and determined periodically at the regular sessions of the Cabinet. In the interval between meetings the Dominions were to be kept fully informed of all developments, but the administration of foreign affairs and the application of the policy already outlined was to be left in the hands of the Imperial Government. The arrangement was clearly disadvantageous for the Dominions; for their voice in foreign affairs was sporadic at best, while they were committed to support the Empire policy (as interpreted by the Imperial Government) to a far greater degree than before the War. Few, however, seem to have perceived the danger. The unostentatious proceedings of the Conference of Prime Ministers quieted many of the fears which had been voiced before its meeting, and its promised solution of the Japanese difficulty distracted the attention from the embarrassing prospect of sharing responsibility without exercising real control. Yet the British Prime Minister was quite frank and explicit when he reviewed the work of the Conference some months later:

Since the war the Dominions have been given equal rights with

<sup>1</sup> Cf. *infra*, Section III, A. 3, pp. 209-10.

<sup>2</sup> Cf. *infra*, Section III, A. 2, p. 205.

Great Britain in the control of the foreign policy of the Empire. . . . The instrument of the foreign policy of the Empire is the British Foreign Office. That has been accepted by all the Dominions as inevitable. But they claim a voice in determining the lines of our future policy. At the last Imperial Conference they were there discussing our policy in Germany, our policy in Egypt, our policy in America, our policy all over the world, and we are now acting upon the mature, general decisions arrived at with the common consent of the whole Empire. . . . The advantage to us is that joint control means joint responsibility, and when the burden of Empire has become so vast it is well that we should have the shoulders of these young giants under the burden to help us along. . . . A wide survey was taken by all the representatives of the Empire, who would honour the policy decided upon, and support that policy when it was challenged. They felt that there was not one among them who was not speaking for hundreds of thousands and millions of men who were prepared to risk their fortunes and their lives for a great Empire.<sup>1</sup>

The plan thus outlined, aside from the objections which might be brought against it on nationalistic grounds, had a very serious technical fault in that it made no serious attempt to improve the means of communication between London and the Dominions. The Conference discussed the matter, but it did nothing except pass the vague resolutions which have been given above, the chief of which expressed a desire for meetings once a year. Yet this lack of contact was mechanically the weakest part of the scheme, for the successful adoption of any foreign policy necessarily depended upon its being genuinely shared in common. A consultation which could take place at best once a year was of little real value unless the understandings reached in Conference were to be maintained and developed continuously through the active participation of all parts of the Empire.

The British Government lost no time in availing itself of the additional weight and prestige thus afforded by the Empire Cabinet. In January 1922 it submitted to M. Briand at Cannes a memorandum regarding Anglo-French relations which plainly indicated that the role for which the Dominions were cast was to be far from passive.

With regard to the safety of France [stated the memorandum], Great Britain is prepared to give her a guarantee that in the event of unprovoked German aggression against French soil the British Empire will put its forces at her side. There will be double value in

<sup>1</sup> *Infra*, Section III, A. 4, pp. 210-11.

this guarantee, since it will not only safeguard France in the event of German attack but will make any such attack extremely improbable. It is not likely that Germany would have attacked in 1914, had she realized the great forces which the British Empire would throw into the war. . . . Great Britain called out a total of nearly 7,000,000 men for military service by land, sea and air. The self-governing Dominions called out more than one million and a half. The Indian Empire called out nearly the same. . . . What the British Empire did once for civilization, it will, if need be, do again. Germany, it is true, has great reserves of trained officers and men; but those of the British Empire will be available as long as those which Germany preserves from the old military regime. . . .

There are two ways in which the guarantee could be given. The first is by means of an offensive and defensive alliance. . . . Such alliances are contrary to British tradition. . . . The second alternative is a definite guarantee that the British Empire would stand by her in the event of unprovoked aggression by Germany against French soil. This alternative was discussed at the Imperial Conference last summer, and it is probable that the opinion of the Empire would support that of Great Britain in giving such a guarantee to France. It would therefore have far greater weight, for it would, the British Government believes, carry with it the whole-hearted opinion, not of Great Britain alone, but of the Dominions, which put a million soldiers of first rank into the field during the war.<sup>1</sup>

It is noteworthy, however, that care was taken to avoid stating that the Imperial Conference had actually pledged itself to stand behind the suggested guarantee, although Dominion support for the policy was confidently hoped for. Moreover, the draft Treaty which accompanied the memorandum contained a clause that 'the present Treaty shall impose no obligations upon any of the Dominions of the British Empire unless and until it is approved by the Dominion concerned'<sup>2</sup>—a strange postscript to a united Empire policy and 'common action in foreign affairs'. Nothing came of the proposed agreement; but the incident furnished an interesting illustration of the readiness to use the influence of the Empire Cabinet and the strength of Empire troops for settling European difficulties.

The Washington Conference on the Limitation of Armament gave another opportunity to carry out in practice the new idea of a foreign policy formulated by the Empire as a

<sup>1</sup> *Can. H. of C. Debates*, April 11, 1922, p. 867.

<sup>2</sup> *Ibid.*, p. 869. The clause followed, almost word for word, that used in the proposed Tripartite Treaty of Guarantee of 1919, *supra*, p. 34.

whole. It was the direct result of the deliberations of the Conference of Prime Ministers on the Anglo-Japanese Alliance, and it supplied in its own right at least one instructive constitutional issue. The incident centred about the status of the Empire delegates.

The Government of the United States, when issuing invitations to attend the Conference, studiously ignored the Dominions and communicated with Great Britain alone. The latter, however, decided to consult the other parts of the Empire before making appointments to the British delegation. 'It was arranged at the recent Imperial Conference', stated one of the dispatches from the British to the Canadian Prime Minister, 'that His Majesty's Government should represent the whole Empire at Washington', but inasmuch as it was desired to obtain members 'with special knowledge of Canadian, Australasian, and Indian points of view' the British Government asked these countries to submit nominations.<sup>1</sup> The request was complied with, and these nominees, together with three from Great Britain, were thereupon appointed.

The Dominions by their acquiescence in this proceeding relinquished an important part of the privileges which had been won at Paris three years before. They had not received, it is true, separate invitations on that occasion, but the standing acquired at Paris and their subsequent membership in the League of Nations had materially altered their position as international persons so that they might fairly expect greater courtesies in 1921. Their new rights were further threatened by their agreeing to the proposed system of representation which, while it allowed them to have delegates, placed their appointment in the hands of the Imperial Government and specified that they were to attend not in the right of the Dominions as such but as a part of the British delegation. The status of the Dominions was thus being undermined from two quarters, the United States and Great Britain. The invitation had ignored their new international standing, and the method of appointing representatives had showed even more plainly that the procedure followed at the Peace Conference was to be regarded as an exceptional incident rather than as a binding precedent.

South Africa was only remotely concerned with the out-

<sup>1</sup> *Infra*, Section III, B. 1, pp. 217-21.

come of the Washington Conference and was consequently not asked by the British Government to make a nomination; but she was vitally interested in the maintenance of Dominion rights. Becoming alarmed at the above departure, General Smuts lodged an emphatic protest on the manner in which the invitations had been issued. The ignoring of the Dominions, he said, constituted a 'direct challenge to Dominion status', and inasmuch as the United States had not ratified the Peace Treaty she had not yet recognized the new position of the Dominions. 'The United Kingdom', said he in a speech at Pretoria, 'is not the British Empire, and a United Kingdom Delegation does not become an Empire Delegation merely by slipping in some Dominion statesmen through a back door.' He considered that the Paris precedent ought to be followed, and in a dispatch to the other Dominion Prime Ministers urged them to press for an invitation before consenting to send delegates.<sup>1</sup>

The response to this appeal was varied. The Prime Minister of Australia was in complete agreement, and accused the United States of having 'slammed the door of the Conference' in the face of the Dominions. New Zealand, on the other hand, gave the complaint very little support, and added that her delegate was already on his way to Washington. Mr. Meighen replied that the time was then too short to permit of the matter being reviewed; but he took care to inform the British Government a few days later that he expected the Dominion representatives to 'hold the same status as at Paris'.<sup>2</sup>

The objections of General Smuts were made too late to have any effect on the acceptance of the invitations, but they evoked immediate action from London on the matter of distinctive Dominion representation. The British Government issued an assurance that the Paris precedent would 'of course' be followed and that each Dominion delegate would be empowered to sign for his Dominion, while the dispatch suggested that steps should be taken by each Government to authorize the issuance of Full Powers to its representative. South Africa was also given a delegate, but as the interest of the Union in the proceedings was slight, it was represented by one of the British members, Mr. Balfour, who

<sup>1</sup> *Infra*, Section III, B. 1, p. 219.

<sup>2</sup> Dewey, A. G., *The Dominions and Diplomacy*, ii, pp. 80-93; *The Round Table*, Dec. 1922, pp. 221-2; *infra*, Section III, B. 1, p. 220.

signed the resulting Treaty for South Africa as well as for the British Empire.

One extraordinary feature of the incident has never been made clear, viz. what basis existed for the statement that there was an understanding at the Prime Ministers' Conference that the British Government 'should represent the whole Empire at Washington'. This assertion was made by both Mr. Lloyd George and Mr. Hughes, and was also contained in a dispatch from the British to the Canadian Government, yet no such agreement was known to General Smuts or to Mr. Meighen.

I was no party [said the latter] to any such arrangement at the Imperial Conference that Canada should be represented merely by a delegation appointed by the British Government, taking its directions from the British Government, nor was such an arrangement arrived at while I was a member of the Conference. Our negotiations took place in this regard by correspondence, and from the first I insisted that we should name our delegate and that that delegate should take his instructions from us.<sup>1</sup>

The fact that Mr. Meighen left the Conference before its final session might explain why he was not there when the decision was made; it does not explain, however, why he was not later informed of the Conference's action nor why General Smuts knew nothing about it.

The importance of the Washington Conference rests largely upon the fact that it was a trial-ground for the idea of a centralized policy endorsed by the whole Empire. In its preliminary stages, at least, it did not inspire confidence or raise many hopes for the future, for it brought out once again the essential conflict between the British and Dominion ideas of Empire government. Those who favoured a strongly centralized negotiating body which would speak with the voice of one Government saw their ideal disintegrate before Dominion attack, and the anomalous Paris delegation with all its possibilities of dissent appear once more. On the other hand, to most Dominion minds (New Zealand being a probable exception)<sup>2</sup> a common foreign policy, applied by Britain

<sup>1</sup> *Can. H. of C. Debates*, Mar. 13, 1922, p. 43.

<sup>2</sup> New Zealand has almost invariably been an exception to any generalization regarding Dominion assertions of nationalism. The New Zealand delegate at Washington, Sir John Salmond, took the extreme legalistic view of the status and powers of the Dominions at the Conference, an attitude which was very different from that of the Canadian delegate, Sir Robert Borden (cp. *infra*, Section III, B. 2 and 3, pp. 221-9).

in the interval between meetings of the Imperial Cabinet, did not imply that the Dominions would not actively participate on the same basis as at Paris whenever it was possible for them to do so. Hence their anxiety when the first steps taken by the British Government seemed to indicate that Dominion individuality must be completely merged in that of the Empire, and that several of the Paris precedents might be conveniently forgotten. The protest of General Smuts regarding the invitation, the response of Mr. Hughes, and Mr. Meighen's insistence on a more strict recognition of the status won at Paris were sharp reminders that in three quarters at least the British views would be challenged. As matters were finally settled the Dominion contentions largely prevailed. The Paris example was strictly followed in everything save the double representation of the Dominions, and their autonomy was unmistakably recognized once again in the appointment of delegates, their standing as a part of the British Empire Delegation, the issuance of Full Powers, and the form, signature, and ratification of the Treaties.<sup>1</sup>

The agreements which issued from the Washington Conference, however, differed from the Treaty of Versailles in that they depended in a very real sense upon Dominion adherence. When the Dominion Parliaments were considering their acceptance of the Versailles Treaty they were frequently held up to ridicule on the ground that their action would make no difference one way or the other, for the King would ratify the Treaty on the advice of the British Cabinet even though the Dominion Parliaments withheld their approval. But the subject-matter of the Washington Agreements placed the Dominions in a much stronger position and made it necessary to secure their consent before the ratification could be given by the Crown. For had a Dominion rejected the Treaty on the Limitation of Armaments and proceeded to build its own navy as it pleased, then Great Britain could not have accepted the naval quota for the Empire without making a corresponding reduction in her own forces. This she would probably be unwilling to risk, and she would consequently have been compelled to protect herself by refusing to be a party to any international agreement of this kind. Dominion acceptance of the Washington

<sup>1</sup> Paragraph 114, Report of the Canadian Delegate, *infra*, Section III, B. 2, pp. 225-6.



Agreements was therefore much more than a gesture: it was absolutely essential if the Empire as a whole was to give its final assent.

Two months after the conclusion of the Washington Conference an international meeting was held at Genoa to discuss economic, financial, and political problems arising out of the War. Under the scheme of representation adopted the Dominions were entitled to the same number of delegates as other minor Powers, and invitations were sent directly from the Italian Government to the Governments of the Dominions asking them to participate.<sup>1</sup> The Dominions were thus again doubly represented as at Paris, and decisions of the Empire Delegation were made only after full consultation with all Dominion delegates.<sup>2</sup>

A much more important event was the signing of an 'Agreement for a Treaty' between Great Britain and Ireland on December 6, 1921, authorizing the establishment of the Irish Free State as the sixth Dominion in the Empire.<sup>3</sup> The occasion was quite unprecedented: for no other Dominion owed its existence to a formal agreement between Dominion and British plenipotentiaries—a document which was considered to be legally superior to the Free State Constitution which followed a year later. The unique position of Ireland was the cause of the Treaty's containing further unusual features which do not appear in the constitutions of the other Dominions, notably, provisions which gave Great Britain special privileges to use Irish harbours and other facilities for purposes of defence, and special guarantees for religious freedom in both the Free State and in Northern Ireland.

A review of Empire constitutional development during this period, therefore, shows a decided trend towards increased centralization. The inaction which marked the years immediately following the Peace was succeeded by the re-appearance, under British initiative, of the Imperial Cabinet or Conference of Prime Ministers in 1921. The Cabinet or Conference recognized in itself the future instrument of Empire government, which would enunciate periodically a common foreign policy and confide the application of such policy between Conferences to Great Britain. In this way the Dominions and India would share in the control of

<sup>1</sup> *Can. H. of C. Debates*, May 11, 1922, p. 1715; *ibid.*, Apr. 11, 1922, p. 870.

<sup>2</sup> *Can. Sess. Papers*, 1923, No. 35, p. 10.

<sup>3</sup> *Infra*, Section III, C, pp. 230-3.

foreign affairs and yet the diplomatic unity of the Empire would be preserved.

The situation as it existed at the conclusion of the Conference of Prime Ministers was, however, highly deceptive. There was an illusory appearance of Empire unity where Empire unity did not in fact exist. The new plan of government was undoubtedly acquiesced in by all Dominion delegates at the Conference, but subsequent events showed that there must have been a marked difference in the enthusiasm with which the suggestion had been received and in the mental reservations that had been quietly made. The Washington Conference gave the first indication that the desire for centralization was not nearly so strong as the British Government believed, that national feeling could not be lightly disregarded, and that certain Dominions had no intention of relinquishing any of the privileges won at Paris. But the most misleading factor in the entire situation lay in the passive attitude of the people of the Dominions, who seem to have had no real appreciation of the fact that a share in the formulation of foreign policy involved a proportionate share in the task of enforcing it. The question had never been placed squarely before them: the Conference of Prime Ministers, which had at first caused some alarm, had been slurred over as being merely another Imperial Conference, and its importance both as a revived Cabinet and as the body accepting responsibility for foreign policies had been either minimized or ignored. There is, indeed, every reason to believe that had public opinion in the Dominions grasped the exact significance of this departure, it would have been summarily rejected by all except New Zealand.

The experiment of a centralized executive for the Empire proved, in the event, to be short-lived. The Imperial Peace Cabinet appeared at a time of constitutional indifference and neglect, but the functions which it endeavoured to exercise were such that when the true nature of the new responsibilities became evident, friction was bound to result. Public opinion in Great Britain and public opinion in the Dominions—so far as any reliable generalization can be made about such intangible factors—were never in agreement on the fundamental questions of the nature of Dominion status and Dominion responsibilities, and the expedients adopted in 1921 and 1922, instead of facing the issue, only served to

postpone the inevitable conflict. The Imperial Peace Cabinet was based on a supposedly weak Dominion nationalism which was later found to be strong, and on a supposedly strong Imperial feeling which was later found to be weak. It broke down at the first severe test to which it was subjected, and subsequent trials only added to the ruins. The first test was the Chanak Incident.

#### IV. THE PERIOD OF DECENTRALIZATION, 1922-6

The fourth period was one of decentralization, or, as the cynical nationalist would probably call it, the Period of Disillusionment. It was short—from 1922 to 1926—but it was beyond any doubt the most important and interesting part of the recent constitutional development of the Dominions. It included the following eleven incidents, many of which presented certain distinctive features and made their peculiar contribution to Dominion national status.

- A. The Chanak Incident, 1922.
- B. The Canadian effort to secure modification of Article X of the League of Nations Covenant, 1920-3.
- C. The Halibut Fisheries Treaty, 1923.
- D. The Treaty of Lausanne, 1922-4.
- E. The Imperial Conference, 1923.
- F. The Recognition of Soviet Russia and the Russian Treaties, 1924.
- G. The Inter-Allied Conference on the Dawes Report, 1924.
- H. The proposed Imperial Conference, 1924.
- I. The Appointment of an Irish Minister to Washington, 1924.
- J. The Registration of the Anglo-Irish Agreement with the League of Nations, 1924.
- K. The Treaty of Locarno, 1925.

##### A. *The Chanak Incident, 1922*

The Chanak Incident may easily prove to have been one of the outstanding constitutional landmarks in Empire relationships, for it brought about an abrupt change in the development of Dominion status. The efforts which had been made during the preceding few years to develop a centralized control of Empire foreign policy were suddenly

rendered useless, the idea of joint responsibility in foreign affairs was badly shaken, and opposing tendencies in different parts of the Empire became dramatically apparent. The Chanak Incident was regarded at the time as an issue of unusual importance, and subsequent events have unquestionably enhanced rather than diminished its significance.

The facts were briefly these. The treaty of peace with Turkey, known as the Treaty of Sèvres, was signed on August 10, 1920. The Dominions had taken no part in the actual negotiations,<sup>1</sup> but their representatives, following the Versailles precedent, signed the Treaty on their behalf. The Treaty, however, was repudiated by the new Nationalist Government in Turkey; Great Britain did not ratify it; while Canada somewhat hastily passed legislation enabling the Government to act under it when it came into effect. Lack of unity among the Allies, the weakness and defeat of Greece by revolutionary Turkey, the growing strength and aggressiveness of the new Turkish Government threatened the entire settlement, and in September 1922 the British Government found itself diplomatically cut off from its Allies and faced with the unpleasant necessity of protecting Constantinople, Chanak, and the neutral zone above the Straits from the army of the revolutionary Turks.

According to the agreement reached at the Conference of Prime Ministers in 1921, the duty of the British Government was plain: the Foreign Office was to apply the Empire policy, already determined, and then look to the Dominions for support in enforcing it. Unfortunately, however, the Empire Cabinet had not met for over a year, conditions in the Near East had been completely transformed within that period, and there was no ready-made Empire policy designed to fit this emergency. The situation was further complicated by the fact that the British and Dominion Governments had not been keeping in very close touch with one another. Imperial communications were in the same unsatisfactory condition as in 1921, and no mechanism had been set up (such as resident Ministers in London) through which the Dominion Governments could be kept properly informed on the latest developments in foreign affairs. Nevertheless, the British Prime Minister, Mr. Lloyd George, decided to

<sup>1</sup> Sir Robert Borden had, however, been the Empire representative on a preliminary Commission, whose recommendations were implemented by the Treaty.

take the initiative. He issued on September 15 what was later euphemistically called an 'inquiry' to the Dominions, outlining the situation in the Near East and the action taken by his Government, and asking them if, in the event of war with Turkey, they wished to be represented by contingents. Almost simultaneously Mr. Lloyd George gave out a similar message to the press, mentioning that an 'invitation' had been extended to the Dominions to send troops to protect 'the soil which is hallowed by immortal memories of the Anzacs'.<sup>1</sup>

The dispatch was received by the Australian Government during the week-end adjournment of Parliament, but Mr. Hughes decided that an immediate reply was imperative. He hastily consulted all his available colleagues, and sent a cable to the effect that Australia would associate herself with Great Britain in whatever action was deemed necessary and would be prepared, if required, to send troops. At the same time, however, he protested vigorously against the action of the British Government in issuing the manifesto to the press before the Dominions had been informed and consulted.<sup>2</sup>

The Prime Minister of New Zealand received the 'inquiry' while attending an investiture at Government House. He discussed it with several cabinet ministers who happened to be present, decided not to delay matters by consulting Parliament, which was then in session, and within an hour replied that New Zealand desired to be associated with the action taken and would send a contingent.

A thrill of patriotism and a deep sense of national obligation [wrote the *Round Table* correspondent] swept through the country. By the press, by public bodies, and by most of the responsible sections of public opinion the Prime Minister's action was cordially supported, and on the same morning on which New Zealand's reply was made public the military offices were besieged with volunteers for immediate service, of whom a large proportion were veterans of the Great War. By Wednesday, September 20, 12,279 officers, nurses and men had enlisted.<sup>3</sup>

When the dispatch arrived in South Africa Premier Smuts was in Zululand, and he did not return for a week. By that time the most acute stage of the Chanak crisis had passed, Canada had made her decision, and another communication

<sup>1</sup> *Infra*, Section IV, A. 1 (a), p. 234.

<sup>2</sup> *Infra*, Section IV, A. 5, pp. 246-51.

<sup>3</sup> *The Round Table*, March 1923, p. 454.

from Great Britain had been received stating that the original message had been intended primarily for Australia and New Zealand whose war-time association with the Straits made them vitally interested in their preservation. General Smuts replied that he did not feel able to commit the Union to active participation until Parliament had met.

In Canada, Parliament was prorogued, and the Prime Minister, Mr. Mackenzie King, was not in Ottawa when the dispatch arrived. The decoded message did not reach the Prime Minister's office until Saturday afternoon, and Mr. King did not return until Sunday. On his way to Ottawa he read with amazement the newspapers which contained both the press dispatch of Mr. Lloyd George and a cable from New Zealand stating that that Dominion had already agreed to send a contingent. Mr. King at once made a complaint to the British Government regarding the giving of an appeal to the press before any communication had been received through official channels, and he also asked for more information concerning the emergency. Up to that time the dispatch had been 'the first and only intimation which the Government had received from the British Government of a situation in the Near East which had reached a critical stage, and with respect of which there was reason to anticipate the necessity of making any kind of appeal for military assistance'.<sup>1</sup> Such was the consultation before the event which Mr. Lloyd George had described nine months earlier as being an essential part of the conduct of Empire foreign policy.<sup>2</sup>

The Canadian Prime Minister also cabled Mr. Lloyd George that 'public opinion in Canada would demand the authorization of Parliament as the necessary preliminary to the dispatching of a contingent to participate in the conflict in the Near East',<sup>3</sup> and that his Government would not act until such authorization was given. He was willing, however, if necessary, to call a special session of Parliament to consider what action should be taken. This reply was, of course, an evasion of the real issue, for had Britain become involved in war, Mr. King would have been compelled to lay before Parliament a governmental policy either for or

<sup>1</sup> Mr. Mackenzie King in the Canadian House of Commons, cf. *infra*, Section IV, A. 3, pp. 239-44, and also Section IV, A. 1, 2, and 4, pp. 234-9, 244-6.

<sup>2</sup> *Infra*, Section III, A. 4, pp. 210-11.

<sup>3</sup> *Infra*, Section IV, A. 3, pp. 242-3.

against participation. There can be little doubt that Mr. King utilized the question of constitutional procedure as a polite method of refusing Canadian assistance, and there is also no question that this was the interpretation placed on his reply by the Imperial Government. It was this action, or inaction, which Mr. Meighen, the Leader of the Opposition, denounced in his famous speech five days later. 'Let there be no dispute', said he, 'as to where I stand. When Britain's message came, then Canada should have said: "Ready, aye, ready; we stand by you." I hope the time has not gone by when that declaration can yet be made. If that declaration is made, then I will be at the back of the Government.'<sup>1</sup> In a few days the most acute stage of the crisis had passed, and the Turks had agreed to a conference with the Allies.<sup>2</sup>

One of the most interesting features about the Chanak Incident was the striking conjunction of circumstances which made the constitutional issue possible and the Canadian response to the 'inquiry' almost inevitable. All influences operated towards the same end, and all were essential to the development of the situation and to the dramatic denouement which ensued. A review of the following factors will show that a material change in any one of them might have led to an entirely different result, and might at least have postponed many of the subsequent changes in Empire relationships.

1. The nature of the British Government. The Coalition Ministry, which had been returned in the hysterical election of 1918, was rapidly disintegrating before the combined attack of internal party dissatisfaction and a series of political misfortunes at home and abroad. It was headed by Mr. Lloyd George, whose chief adviser in the Chanak affair was the jingoistic Mr. Winston Churchill. Although the message to the Dominions was approved by the whole Cabinet, the communiqué to the press was drafted by these two men, who did not trouble to consult all their colleagues—amongst them the Foreign Secretary—before making it public.<sup>3</sup> Whether Mr. Lloyd George was moved by the necessity of restoring by some striking coup a rapidly waning prestige as

<sup>1</sup> *Infra*, Section IV, A. 1 (b) (3), pp. 236-7.

<sup>2</sup> Dewey, A. G., *The Dominions and Diplomacy*, ii, pp. 113-26; Toynbee, A. J., *The Conduct of British Empire Foreign Relations since the Peace Settlement*, pp. 46-52.

<sup>3</sup> Ronaldshay, Lord, *The Life of Lord Curzon*, iii, p. 302.

leader of the Coalition Government, or whether his pre-eminence in world affairs had made him a little careless of the niceties of inter-Imperial relationships, is a matter for speculation. One thing, however, is certain: no other British Prime Minister would have been guilty of so short-sighted a blunder as the 'inquiry' and its accompanying manifesto.

2. The lack of facilities for communication between the British and Dominion Governments. The Empire was endeavouring to carry out a common foreign policy with inadequate means for exchanging the ideas from which alone this policy could be created and applied. This weakness had been repeatedly brought to the attention of the Governments, particularly at the Conference of Prime Ministers in 1921, but no action of any consequence was taken.

It is absolutely essential [said Mr. Hughes in his opening speech to the Conference] if we are going to have any effective voice in foreign policy, that we shall be in the closest possible touch with you and with each other, and that we shall know, not when the thing is done, but before the thing is done, what is intended, or what is desired to be done. This is essential because in foreign policy, as, indeed, in many cases in domestic policy, you cannot delay. Action is imperative. A thing that is possible to-day is impossible to-morrow, and action must be taken. So, if we are going to have a real voice in foreign policy, then we must have improved communication—means whereby you will be able to communicate quickly with your colleagues overseas, and they with you and with each other. That is absolutely essential.<sup>1</sup>

The danger perceived by Mr. Hughes appeared in an acute form in the Chanak Incident, for even the existing means of communication seem to have broken down. No attempt had been made, according to Mr. Mackenzie King, to inform the Dominion Governments of any impending crisis in the Near East; they were suddenly confronted with an unexpected emergency hidden in a veil of ignorance.

3. The 'inquiry', following upon the earlier silence on the situation in the Near East, was a direct affront to any Government which had cherished the idea that it was to be at least consulted on foreign policy; it was a still greater affront to those Dominions which had been repeatedly assured that they were to have an active share in formulating such policy.

<sup>1</sup> Report of the Conference of Prime Ministers, *Parl. Papers (G. Britain)*, 1921, Cmd. 1474, p. 19.



Ever since the meeting of the first Imperial War Cabinet the British Government had been pledged to invite Dominion participation in any important departure in foreign affairs. Sir Robert Borden, speaking in 1917 on the future of Empire government and the Imperial War Cabinet, made the following explicit statement:

It is not proposed that the Government of the United Kingdom shall, in foreign affairs, act first and consult us afterwards. The principle has been definitely and finally laid down that in these matters the Dominions shall be consulted before the Empire is committed to any important policy which might involve the issues of peace and war.<sup>1</sup>

The promise given in 1917 was reiterated time after time, and was the dominant note in the plan of Empire government enunciated by the Conference of Prime Ministers in 1921. The fact that such consultation was not practicable on the Chanak issue must be accepted as an extenuating circumstance, but it cannot excuse the complete absence of any attempt to anticipate the crisis before it became acute.

4. The suggestion or invitation to the Dominions regarding the sending of troops was entirely without precedent; it was unknown even in the days when the Dominions had no illusions about their share in foreign affairs.<sup>2</sup> A departure of this kind was thus certain to antagonize any Dominion which was jealous of its constitutional rights, whereas a mere statement of the circumstances of the crisis might, quite conceivably, have produced the desired response.

Never in our history up to now [said Mr. Bonar Law] had we made an appeal to the Dominions for help, but the offers of help had come invariably from the Dominions without an appeal from us. To throw suddenly as a bolt from the blue this appeal for help, when not one of the Dominions had the remotest idea that there was any need of it, and when it was well known that their help could not come in time to be of any assistance in the crisis, was to risk, in my opinion, one of the greatest assets of the Empire. It was to take a risk with our Dominions which no wise man would have taken and which, I think, was not more foolish than it was wrong.<sup>3</sup>

<sup>1</sup> *Can. H. of C. Debates*, May 18, 1917, p. 1528.

<sup>2</sup> The nearest approach to Chanak occurred in 1885, when the Canadian High Commissioner at London, Sir Charles Tupper, suggested to Sir John Macdonald that Canada might send troops to the Sudan. Sir John refused in a most decided fashion. Cf. Pope, Sir J., *Correspondence of Sir John Macdonald*, pp. 337-8.

<sup>3</sup> *London Times*, Nov. 8, 1922.

5. If the dispatch to the Dominions was unwise, the communication given to the press was utter folly. This also had no precedent in Empire history. Lord Curzon, the Foreign Secretary, said that he read it 'with consternation'. The manifesto, he added, 'was seen by two or three members of the Cabinet, including the Prime Minister, but by no one else, and was issued to the press that afternoon. Neither I nor the Foreign Office was informed.'<sup>1</sup> Mr. Asquith stated that 'it was a production which sounded the double note of provocation and of panic'.<sup>2</sup> Mr. Bonar Law said:

When I read that manifesto, I thought, and I said to a friend who was with me at the time: 'It is utterly impossible that this or any Government should have made such an appeal without previous confidential correspondence with the Prime Ministers of the Dominions.' What was my amazement to find in a few days that, not only was there no such consultation with the Dominions, but that this extraordinary manifesto had been issued with the knowledge of three or four members only of the Cabinet, and that not any of the others knew anything about it.<sup>3</sup>

The communication to the press was a deliberate attempt to go over the heads of the Dominion Governments and appeal to the emotions of the people—an effort which even in Canada was not entirely unsuccessful.<sup>4</sup> Tactics of this kind, however, could not fail to irritate Dominion susceptibilities: the Canadian Cabinet was certainly prejudiced from the outset by such a signal lack of courtesy, and although Mr. Hughes had lost no time in pledging the support of Australia, he nevertheless bitterly resented the manner in which the appeal had been made.

The position in which the action of the British Government placed the Dominions was not only embarrassing but deeply humiliating. That they should again be brought to the very brink of war without even knowing of the long train of events which had led to the crisis, held them up to the ridicule of a world almost deafened by their loud declarations that they were nations equal in status and authority to Great Britain. In the face of what had happened, their claim to be regarded as nations appeared only the pretentious vapourings of adolescence. Had the position been communicated through confidential channels, we should have at least been able to express our opinions freely, and possibly even to insist that the situation should be handled by the representatives of the Dominions acting with those

<sup>1</sup> Ibid., Nov. 10, 1922.

<sup>3</sup> Ibid., Nov. 8, 1922.

<sup>2</sup> Ibid., Oct. 7, 1922.

<sup>4</sup> *Can. Annual Review*, 1922, pp. 181-4.

of Britain. But the world-wide publicity given to the matter precluded this course. It was inexcusable that the Dominions should have been left to learn from the press of a crisis which had already developed to a point when war seemed to be inevitable. . . . The request of the British Government that the Dominions should not only stand by Britain, but be represented by a contingent of troops, was made public before the Dominions had received the official communication notifying them that a serious crisis existed!

To say that this savoured of sharp practice, and appeared to be a dodge to manoeuvre the Dominions into a position from which there was no retreat, is not to put the matter too strongly. It certainly placed the Government of Australia in a most invidious position. The explanation given by the British Government, in response to the very strongly worded telegram sent from Melbourne, 'that premature publication in the press resulted from an unfortunate misunderstanding by the officials of the instructions of the Colonial Secretary', was entirely inadequate and really aggravated the offence. For the British Government did not deny that it had intended to release the information to the press before the Dominion Governments had had time to consider the situation in Cabinet, although publication would necessarily prevent that calm review which is the essence of representative government.<sup>1</sup>

6. The Canadian Government was in the hands of the Liberal party, and the Liberals were at this time not at all eager to take part in European wars on British invitation. They had been in office but a few months; they had not yet recovered from the division and discord engendered by the conscription issue and the formation of the Union Government; and they were still somewhat dazed by the radical advances made by Sir Robert Borden in Imperial and foreign relations. The Liberals were thus in a quandary. They did not wish to risk disaster by an extreme advocacy of nationalism, for one section of the reunited party was decidedly unsympathetic and there was some doubt as to whether the country would support such a programme. On the other hand, they did not dare to go back to colonialism (which had been the first Liberal impulse in 1919), for that would have branded them as being more conservative than the Conservatives and would have lost them the support of the Progressives, whose votes in the House they were finding very useful at this time. Everything thus pointed to a temporizing policy, and Mr. King's reply was the one naturally dictated

<sup>1</sup> Hughes, W. M., *The Splendid Adventure*, pp. 242-4.

by the circumstances. Substitute for this inaction the 'ready, aye, ready' of Mr. Meighen, and there is little difficulty in surmising how another leader and another party might have given a quite different answer.

7. The issue which gave rise to the invitation was of no conceivable interest to the Canadian people. Canada, it is true, had signed the abortive Treaty of Sèvres, but by the time the Chanak Incident occurred her interest in the affairs of Asia Minor had completely disappeared. It would, in fact, have been difficult in 1922 to have invented an international crisis of less concern to the Canadian people than a dispute in the Near East over the actions of a revolutionary government in Turkey. A more important issue in western Europe might easily have led to an outburst of popular feeling which would have forced the Government to take action.

Many circumstances thus conspired to create the constitutional crisis, and, having created it, to ensure that Canada would give one answer, and one answer only, to the invitation. The plot worked itself out with the inevitability and determinism of a Hardy novel. The position and leadership of the British Government, the lack of proper communications within the Empire and the failure to use those already in existence, the manner in which the Canadian Government was approached, the peculiar situation of the Liberal party at the time, the remoteness of the issue—every road was blocked save one, and the Canadian decision was made without there being any genuine alternative to consider.

The Chanak Incident was of outstanding importance for several reasons. It was the first occasion on which a British Government had ventured to ask a Dominion for assistance: it was also the first occasion on which a Dominion had refused to stand by the remainder of the Empire in a serious emergency. It suggested, moreover, by implication that although Great Britain might be engaged in war, a Dominion might take no part in the actual hostilities, thereby drawing the distinction, in Professor Toynbee's phrase, between a state of 'active belligerency' and one of 'passive belligerency'.<sup>1</sup> Had the Empire been involved in a war with Turkey, Canada, in all likelihood, would have remained aloof: legally, she would have been at war; actually, she would not have partici-

<sup>1</sup> Toynbee, A. J., *The Conduct of British Empire Foreign Relations since the Peace Settlement*, pp. 2-3, 46-52.

pated. Such a situation indeed had not been entirely unknown in Empire history, for the Dominions had taken no part in a number of minor British wars, and the proposed Anglo-French Treaty of Guarantee in 1919 had provided that the Dominions should be exempted from its operation unless they specifically expressed a desire to be included.<sup>1</sup> The notable feature in the Chanak Incident, however, was that the Canadian attitude was taken after an appeal had been made by the British Government, and the refusal was made all the more pointed because of the precipitate acceptance of Australia and New Zealand.<sup>2</sup>

Chanak, moreover, furnished the first acid test of the scheme which had been adopted in 1921 to secure a united foreign policy, and it marked the unquestioned failure of that policy when the Empire was suddenly confronted with the necessity of making a common decision. The obvious difficulty was that there existed no Empire policy on this issue, and as a result the British Government was forced to proceed on its own initiative without previous consultation with the Dominions. Had Mr. Lloyd George formulated his policy and gone no further, few criticisms would have been raised: it was his endeavour to make it an Empire policy and to obtain an *ex post facto* support from the Dominions that led to the constitutional crisis. The scheme outlined in 1921 simply would not work. No programme for the future, stated by an Imperial Cabinet, could hope to anticipate all the contingencies that might arise in the troubled and uncertain field of foreign affairs. Nor was it possible for the Dominions, without revolutionary changes in contacts and communications, to exercise an effective control over a policy which necessarily changed with conditions from day to day. Nor, as events proved, did the third alternative, a

<sup>1</sup> Cf. *supra*, p. 34.

<sup>2</sup> Australia, however, like her Prime Minister, Mr. Hughes, was not at all satisfied with the Chanak procedure. 'Subsequent discussion of the incident in Parliament and in the press revealed not only strong opposition to a new war-after-the-war, but considerable discontent with the system which at present leaves the Dominions without any active part in the shaping of Imperial foreign policy, and exposes them to the risk of being involved in war out of mere loyalty to the Mother Country.' *The Round Table*, March 1923, pp. 405-6; cf. *infra*, Section IV, A. 5, pp. 246-51.

On Dec. 6, 1922, less than three months after Chanak, the new Constitution of the Irish Free State came into effect. Article 49 of that Constitution explicitly deprived the executive of the power to commit the nation to active warfare without the consent of the legislature. The Article reads:

'Save in the case of actual invasion, the Irish Free State shall not be committed to active participation in any war without the assent of the Oireachtas.'

British-made policy accepted and honoured by the Dominions, have any greater chance of success. Canada and South Africa were not willing to be subordinate to the British Foreign Office, and in refusing to accept responsibility for a programme which had been drawn up without their aid they effectively destroyed the idea of a united Empire foreign policy.

In Canada, the most important effect of the Chanak Incident was psychological. Canadians suddenly realized that participation in the foreign policy of the Empire meant something much more than attendance at an occasional meeting of the Imperial Cabinet, and that it might involve awkward responsibilities in which they had at best only a casual interest. Nor was that all. Such responsibilities might conceivably be accepted and borne if they were assumed at the instance of the Canadian Government or in consultation with the Canadian Government. Chanak, however, seemed to furnish clear evidence that the Dominions were to be utilized by the British Government and consulted only when the Foreign Office found it convenient. If this was the new system which had been developed as a result of the sacrifices of the War, then no time should be lost in altering it. The movement towards decentralization and aggressive nationalism had begun once more.

It is evident that the true significance of the Chanak Incident is not to be found in the event itself, but in the fundamental divergence of ideas of which it was but an expression. Great Britain and the Dominions differed profoundly in their international interests and outlook, and the strong nationalistic feeling in several of the Dominions could not fail, when political issues arose for decision, to emphasize these differences. These centrifugal forces were certain to make themselves felt eventually; and there can be little doubt that had the Chanak Incident not occurred, a similar clash of principles would have arisen over some other subject during the next few years. Chanak merely crystallized these differences and brought them in vivid form to the attention of the Empire. The fortunate circumstance, from the constitutional point of view, was that the Incident was not only timely, but that it presented in clear-cut, unmistakable fashion the underlying conflict between British and Dominion interests in foreign affairs.

B. *The Canadian effort to secure modification of Article X of the League of Nations Covenant, 1920-3*

The admission of the Dominions in 1919 to full membership in the League of Nations was widely interpreted as a clever though obvious device on the part of Great Britain to obtain more votes in the Assembly. Subsequent events soon brought enlightenment. At the first meeting of the Assembly in 1920 the Dominions asserted their independence on several occasions by both speaking and voting against the British delegates—a procedure so unexpected that several of the foreign representatives thought they were witnessing the dissolution of the Empire. One aspect of this assertion of Dominion individuality, however, was somewhat unusual. The delegates from Great Britain and the Dominions, while not hesitating to consult with one another, made no effort to co-ordinate their activities by holding preliminary conferences before meetings of the Assembly, an omission somewhat difficult to understand in those years when the Empire was supposed to be developing and applying a common foreign policy.

One of the most interesting of the Canadian ventures was concerned with Article X of the Covenant of the League, which guaranteed 'against external aggression the territorial integrity and existing political independence of all Members'.<sup>1</sup> Canada had unsuccessfully tried to prevent the inclusion of this Article when the Covenant was drafted; and for four years her delegates (both Conservative and Liberal) had spared no effort to have it repealed or amended. In 1923 they finally secured an interpretative resolution from the Assembly which somewhat allayed the Canadian fear of being dragged into a war in order to maintain the *status quo* in some distant country.<sup>2</sup> The persistent opposition to Article X on the part of both political parties in Canada, occurring so recently after the active Canadian participation in world affairs, was highly significant: it indicated a new distrust of all 'foreign entanglements' and a general sympathy with American continentalism—a sympathy which has tended in later years to become more and more pronounced. Moreover, the general success of the League and the confident hope in its future which characterized the third decade of

<sup>1</sup> Cf. *infra*, Section II, C. 1, p. 201.

<sup>2</sup> Cf. *infra*, Section IV, B, pp. 251-4.

the century had an important indirect influence on Imperial relations. The League formed a new bulwark of defence and stability: there was a comfortable feeling that the world was much less perilous than in 1914, and that small nations had an appeal to an authority and to a world opinion which had been unknown before the War. Inevitably, this had a stimulating effect on the growth of nationalism in the Dominions; and many of the latter's self-confident demands for greater independence in foreign affairs owed much, consciously or unconsciously, to this atmosphere of apparent world security which had been in a large measure created by the existence and work of the League.

### C. *The Halibut Fisheries Treaty, 1923*

The constitutional issues which helped during these years to define more precisely the status of the Dominions were brought about in some degree by accident, but mostly by design. Chanak, at least so far as the Dominions were concerned, was almost entirely the product of chance; for the question was thrown into Empire politics quite unexpectedly, and while the Canadian decision to remain aloof was deliberately made, it formed no part of any existing programme for enlarging the national powers. It is very probable, however, that although the Canadian Government had no control over the sudden appearance of the Chanak issue, the emergency was not entirely unwelcome. The more nationalistic of the Ministers must have rejoiced in a crisis which gave them not only an overwhelming cause to argue in the Cabinet, but an equally favourable test case to place before public opinion. The popular response was unmistakable; and the Government was not slow to put to a practical use this revival of Canadian national feeling. The Liberal policy on imperial and foreign relations, hitherto nebulous and uncertain, acquired in a few months a form and direction that it had noticeably lacked since the War, and Chanak thus became *ex post facto* a part of a new Liberal programme of national assertiveness. Henceforth the Government was constantly on the alert to seize any opportunity which could be used to extend Canada's constitutional powers, a task which was made much easier by the actions of the British Government, which on more than one occasion unnecessarily played into the Dominion's hands by giving it the opening which



it desired. The natural result of this willingness to accept constitutional material was a rapid succession of political incidents, some deliberately created by the Canadian Government, others appearing largely as a result of forces over which it had no control, but all welcomed as further opportunities for measuring the extent and quality of Dominion status.

All through the movement looking to the enlargement of autonomy [writes John W. Dafoe] there were two schools of tacticians. There were those who seized on every declaration looking towards equality and pushed its implications to the farthest limits, holding that the anomalies arising from the legal limitation fixed by the constitution were rendered obsolete by these developments, and should therefore be ignored or, if this proved necessary, removed. Others, mostly of high legal attainments, thought this procedure irregular. They preferred to bring about constitutional changes by first changing the law by recognized political and parliamentary methods.<sup>1</sup>

The above statement, although applicable to several periods of Canadian history, was written with particular reference to the years under review. The Canadian Government at this time did not hesitate to use both methods for gaining its end, but it unquestionably placed an increasing reliance upon the first. This was, ironically enough, the traditional British approach to problems of government: the disregard of theory and the concentration on individual practical cases which arose for solution. Chanak was the first of such incidents in this period, and it was followed soon after by the Halibut Fisheries Treaty and the Treaty of Lausanne,<sup>2</sup> two issues which deliberately and with marked success raised practical questions at the expense of both theory and precedent. The happy results of these early ventures could not fail to affect the future strategy of the Dominion Government; it was consequently encouraged to seek its objective by occasional skirmishes on practical questions rather than risk possible defeat, and perhaps disapproval within Canada itself, by a major engagement on sweeping legal changes. Practice, once established, could in due course be depended upon to master the most stubborn theory or statute.

In December 1922 the Canadian and American Governments entered upon negotiations regarding the halibut

<sup>1</sup> Dafoe, J. W., *Clifford Sifton*, pp. 461-2.

<sup>2</sup> Cf. *infra*, pp. 72-80.

fisheries in the North Pacific, and three months later had reached an agreement for the future regulation of the industry. These discussions were conducted on behalf of Canada by her own representative, a procedure which was not at all exceptional, for the Dominion had possessed before the War the power to enter into commercial and technical treaties with other countries. This, as stated above,<sup>1</sup> had hitherto been subject to a formal control by Great Britain; for the Dominion negotiators had received their powers from the King acting on the advice of the British Cabinet, the British Ambassador to the foreign country concerned had signed the resulting treaty in association with the Dominion representatives, and the King, again advised by the British Cabinet, had ratified it. This procedure had been followed in 1922 and 1923 when Canada had concluded treaties with France and Italy.<sup>2</sup>

As the halibut fisheries agreement approached a conclusion, however, the Canadian Government made two suggestions to Great Britain. In the first place, it asked that the title of the proposed treaty be altered so as to state that the convention was between 'the United States and Canada' in place of 'the United States and Great Britain'. This request was later abandoned when the Imperial Government advised that the most suitable title was a 'Convention for the regulation of halibut fisheries on the Pacific Coast of Canada and the United States'—a solution which omitted any mention of the names of the contracting parties.<sup>3</sup>

The second suggestion could not be so easily evaded. The Canadian Government had already requested by Order in Council that Full Powers should be issued to Mr. Lapointe, the Canadian representative, so that he might sign the treaty; and the King, as at the time of the Peace Treaty, had complied. The Canadian Government then proposed that a new precedent should be established by permitting its representative to sign alone, a procedure which had hitherto been unknown except in such informal undertakings as the Canadian-American Reciprocity Agreement of 1911.<sup>4</sup> Inasmuch as the treaty concerned Canada only, so the Dominion

<sup>1</sup> *Supra*, pp. 5-6.

<sup>2</sup> *Can. Annual Review*, 1922, p. 37. The Italian Treaty was signed, not by the British Ambassador to Italy, but by the Foreign Secretary, Lord Curzon. *Can. H. of C. Debates*, May 2, 1923, pp. 2403-4.

<sup>3</sup> Cf. *infra*, Section IV, C, pp. 254-7.

<sup>4</sup> Cf. *supra*, p. 6.

Government argued, the usual signature of the British Ambassador was quite unnecessary: the agreement had been negotiated by Canada alone and it should be signed by Canada alone, who was prepared to assume the responsibility for it. After some demur, the British Government agreed; and Mr. Lapointe signed the Treaty without the British Ambassador.<sup>1</sup>

The Canadian Government had fought its engagement on ground which it itself had chosen,<sup>2</sup> and conditions naturally favoured its cause. In the first place, the subject-matter of the Treaty concerned only Canada and the United States, and the demand of the Government to control completely the terms of the agreement was obviously reasonable and based essentially on the realities of the situation. Moreover, the usual argument that the British Government ought to be a party in order that Imperial interests might be safeguarded could not, in the absence of any such interests, be applied to this treaty. Nor had Great Britain anything to gain by the signature of her Ambassador except the acceptance of a responsibility which in the last resort she could not (or would not) enforce. Sir Cecil Hurst, speaking on the subject four years later, said:

The question had to be faced of what the addition of the signature of the British Ambassador implied, when the stage had been reached, as it then had been, that a Dominion was at liberty to negotiate and conclude a treaty on a matter exclusively affecting its own interests. It was felt that in the eyes of the foreign state with which the treaty was concluded the Ambassador's signature might be taken to imply a pledge by Great Britain that the treaty should be carried out, and Great Britain was in no position to give that pledge. She had no means beyond the powers of persuasion of forcing Canada to carry out the treaty, and in the circumstances it was, from the British point of view, better for the Canadian signature to stand alone on the treaty. Canada desired that the signature of the Canadian plenipotentiary should stand alone for a different reason. She wished it to indicate her ability to make her own treaties herself. It was fortunate that the two points of view coincided.<sup>3</sup>

<sup>1</sup> Cf. *infra*, Section IV, C, pp. 256-7.

<sup>2</sup> But the Canadian Cabinet was apparently not unanimous on the Halibut Fisheries Treaty issue. Mr. Fielding, the Minister of Finance, speaking of the signature of the British Foreign Secretary appended to the Canadian-Italian Treaty of 1923, said: 'Whatever others may have said, it appeared to me that the name of the distinguished Principal Secretary of State for Foreign Affairs, Lord Curzon of Kedleston, rather added to the weight of this document, and I was glad to have it there.' *Can. H. of C. Debates*, May 2, 1923, pp. 2403-4.

<sup>3</sup> *Great Britain and the Dominions*, pp. 81-2.

Finally, the Treaty was not purely commercial—a fact of which the Canadian Government was doubtless well aware when it elected to make this particular agreement a precedent for the future. Had the Government based its case on a commercial treaty alone, even a successful termination of the dispute would have left the more important field of political treaties quite untouched. This treaty, however, possessed both political and commercial elements; and the Government realized that if the principle of a separate Dominion signature were once conceded in such a case, then the later extension of the precedent to treaties of all kinds would be a comparatively simple matter.

The plans of the Canadian Government had approached a successful conclusion when they were suddenly threatened from an unexpected quarter. The American Senate, actuated perhaps by a desire to deny Canada recognition, ratified the Treaty with an 'understanding' that 'none of the nationals, inhabitants, vessels or boats of any other part of Great Britain shall engage in the halibut fishery contrary to the provisions of the said Convention'.<sup>1</sup> The object of the reservation was to bring Great Britain directly under the Treaty; and the effect of this extension was that Great Britain and the other Dominions were made parties to the agreement, their ratification consequently became necessary, and the whole value of the precedent which the Canadian Government had been at such pains to create was thereby destroyed. The Canadian Parliament, however, refused to accept any changes, and authorized the ratification of the Treaty in its original form. The American Senate, faced with the alternative of the Treaty without the reservation or no Treaty whatever, chose the former, and ratified it unconditionally over a year later.

The final outcome of the incident was therefore satisfactory to the Canadian Government. The evolution of the treaty-making powers had been carried a step further, and the Dominion had successfully asserted its right to negotiate and sign separate treaties with a foreign country without the participation of Great Britain. Some authorities, however, notably Mr. Meighen and Professor Keith,<sup>2</sup> denied that any substantial change had been made, contending that the

<sup>1</sup> *Infra*, Section IV, C, p. 257.

<sup>2</sup> *Can. H. of C. Debates*, June 27, 1923, pp. 4477-8; Keith, A. B., *Responsible Government in the Dominions* (1928), II, pp. 881-2, 897.

responsibility for the Treaty had still been assumed by the British Government when the King had issued the Full Powers to Mr. Lapointe. The case of the Canadian Government, on the other hand, was supported on the ground that the British Ministry played but a passive part and was acting merely as an intermediary between the King and the Dominion; the latter really advised the King, and thus took the responsibility for his act.<sup>1</sup> The disputed point was unofficially settled a few months later<sup>2</sup> in favour of the contention of the Dominion Government, and it was finally and authoritatively laid to rest in 1931.<sup>3</sup>

#### D. *The Treaty of Lausanne, 1922-4*

It will be recalled that the tense situation in Asia Minor in 1922 was finally relieved by the Turkish Government agreeing to hold a Conference with the Allied Powers to conclude new terms of peace.<sup>4</sup> This meeting was known as the Lausanne Conference; and the new agreement, the result of prolonged negotiations, became the Treaty of Lausanne. Turkish politics, having already supplied the British Dominions with one constitutional issue, proceeded, curiously enough, to furnish a second which was not entirely unrelated to the first. The question which had arisen in the Chanak Incident was the Dominion responsibility for a British-made war; that at Lausanne was the Dominion responsibility for a British-made peace.

A full appreciation of the issues surrounding the Lausanne Conference and Treaty is possible only after a reading of the documents, but a brief summary follows.<sup>5</sup>

On October 27, 1922, the Dominion Governments were informed that Great Britain had agreed to send two plenipotentiaries to confer at Lausanne with representatives from Turkey and other interested Powers. No provision was made for Dominion representation because (as a confidential cable explained) France had informed Great Britain that if the

<sup>1</sup> The same point had been raised at the time of the Peace Conference, *supra*, p. 34. Mr. Mackenzie King, when the Halibut Treaty was being debated in 1923, replied to Mr. Meighen that Full Powers were issued to Mr. Lapointe 'with the advice' of the Imperial Government—an admission which, if true, would have materially weakened his argument that a real advance in the treaty power had been made. *Can. H. of C. Debates*, June 27, 1923, pp. 4477-8.

<sup>2</sup> *Infra*, Section IV, E. 3, pp. 283-6.

<sup>3</sup> *Infra*, Section V, F. 1, pp. 421-2.

<sup>4</sup> *Supra*, p. 58.

<sup>5</sup> The correspondence between the Governments is given below, Section IV, D, pp. 258-72.

Dominions were to be given delegates, she would insist on equal consideration for her colonies of Tunis, Algeria, and West Africa.<sup>1</sup> The Dominion Governments, however, were to be kept fully informed during the progress of the negotiations and were to be invited to sign the new treaty.

The Canadian Government, alone of the Dominions, raised difficulties. It took 'no exception to the course pursued by His Majesty's Government with respect to the conclusion of a treaty to end the war in the Near East', but it hastened to inform Great Britain that Canada would be bound by the resulting treaty only to the extent determined by the Canadian Parliament. No information furnished by the Imperial Government was to impair in any way the rights and powers of the Parliament of Canada in this matter.

The purpose of this dispatch was evidently misunderstood by the British Government, which replied that it realized that the treaty with Turkey must be approved by the Canadian Parliament.

The Canadian Government then repeated its earlier position, and added that it had 'not expressed a desire to have any treaty with Turkey . . . submitted to the Canadian Parliament' before ratification, nor did it ask for any such submission. 'Parliament will desire, as respects the Treaty with Turkey and any other instruments arising out of the Lausanne Conference, to reserve to itself the right to decide upon the merits of the case what action on the part of the people of Canada is right and proper. In this connexion we shall be pleased to have authority to place before Parliament all the information with which we may be supplied.'

The original confusion of the British Government as to what Canada desired can be easily understood, but the last dispatch given above should have dispelled any doubts as to the Canadian intentions. The British Government, however, not only persisted in its misconception, but indicated its complete bewilderment by making the astonishing statement that it had hitherto assumed that Canada wished to follow the procedure adopted in the other peace treaties.

To this the Canadian Government made the obvious, but none the less effective, reply that these precedents were not applicable. Whenever Canada had 'a direct or immediate

<sup>1</sup> The contents of this cable are still nominally confidential, but it is generally admitted that they were as stated above. *The Round Table*, Sept. 1924, p. 810.

interest' in a proposed treaty she expected to participate at four separate stages: direct representation at the Conference; signature to the treaty; approval of the treaty by Parliament; and assent by the Canadian Government to the ratification. Inasmuch as one stage necessarily depended upon the preceding stage, and as Canada had not participated, either directly or indirectly, in the Lausanne Conference, the precedent established at Paris could not possibly be followed. Again, however, the Canadian Government pointed out that it was not objecting to the procedure which had recently been used. The leading Powers had apparently considered that Canada had no 'direct or immediate interest' in the subject-matter of the Conference, and the Canadian Government, the dispatch implied, was content to accept the decision on this ground.

On January 27, 1923, the British Government replied that it was willing that only the British plenipotentiaries should sign the Treaty.

The matter rested there until February 22, 1924, when the British Government expressed the hope that Canada would signify her concurrence in the ratification of the Treaty.

On March 24, 1924, the Canadian Government replied that as Canada had not been invited to send representatives to the Conference, as she had not taken any part in the proceedings, and as she was not a signatory to the Treaty, the Government did not feel that it should recommend the approval of the Treaty to Parliament; and without such approval it would not signify concurrence in the Treaty's ratification. The dispatch added, however, that the Canadian Government would take no exception to any course the British Government might recommend in regard to ratification.

The result was that the British Government ratified the Treaty in the name of the Empire, although Canada and the Irish Free State<sup>1</sup> refused to accept any definite responsibility for it.

The first point to be noted is naturally the complete abandonment of the right of Dominion representation which had been established at Versailles, Washington, and other

<sup>1</sup> The Irish Free State was not organized when the Lausanne issue began; but she later followed the Canadian lead and adopted an even more recalcitrant position. Keith, A. B., 'Notes on Imperial Constitutional Law', *Journal of Comparative Legislation*, 1924, part iv, pp. 194-5.

international conferences. Lausanne was the last of the peace treaties, and although the Dominions' interest in these settlements had been steadily diminishing, their right to be represented was unquestioned, and their plenipotentiaries had signed all of them, including the first treaty (Sèvres) with Turkey.<sup>1</sup> The Dominions were not even consulted, however, in regard to the Lausanne Conference: they were informed of the names of the British delegates after the choice had been made, and they were told that their own representation was impossible because the French had raised objections. It is very probable, indeed, that had the Dominions been asked to participate, the majority and perhaps all of them would have been willing to allow the British members to act for them as South Africa had done at Washington.<sup>2</sup> Such a procedure, while achieving the same result, would have created an entirely different impression throughout the Empire.

The action of the Imperial Government is even more difficult to justify when it is remembered that the Lausanne issue began only a month after the Chanak Incident and consequently at a time when every effort should have been made to conciliate the Dominions. To invite them to send troops to fight the Turks in September and to refuse to invite them to make peace with the Turks in October was neither tactful nor reasonable; and the argument that France would not permit Dominion representation does not seem to be sufficiently strong to warrant so complete a relinquishment of their rights.<sup>3</sup> Such neglect certainly could not be reconciled with the idea of continual Dominion participation in foreign policy which had been so carefully outlined a little more than a year before, and a protest from the Dominions would have had ample justification. No such protest was lodged; but autonomists throughout the Empire showed no reluctance at receiving another useful issue from the generous hands of the British Government. Nothing, for example, could have been more opportune for those members of the Liberal Government in Canada who, already shocked by the

<sup>1</sup> Thirteen names were appended to the Versailles Treaty on behalf of the Empire; eight to the Washington Agreements; one to the Treaty of Lausanne. *The Round Table*, June 1924, p. 513.

<sup>2</sup> *Supra*, p. 49.

<sup>3</sup> Mr. Meighen, who had read the confidential correspondence giving the reason why the Dominions could not be represented at Lausanne, evidently thought that such representation could have been obtained by insistence. *Can. H. of C. Debates*, June 9, 1924, p. 2937.



mad precipitancy of Chanak, were casting about for a national policy in Imperial and foreign affairs. They willingly accepted the British contribution of Chanak and Lausanne, added one of their own in the Halibut Fisheries case, expanded the Lausanne issue, and within six months had determined in a large measure the attitude which Canada was to take during the decisive years from 1922 to 1926.

I believe [said Mr. Mackenzie King in the Lausanne debate] that the future of this Dominion will be happiest and best, most prosperous, and in every way most to the good, if its development is . . . towards a fuller recognition of national status within the community of free nations which comprise the British Empire; and it is because I hold that view, it is because I believe in it so strongly, that, in this particular matter, I have been prepared to risk whatever in the way of misunderstanding and criticism and censure might come from those who have not had a full knowledge or appreciation of the significance of the facts. I have been taking my stand from the point of view of Canada a nation within the British Empire, not Canada a colony, not Canada in any inferior or subordinate position, but Canada a country which has gained and which merits equality of status with other Dominions and with the Mother Country in these inter-Imperial relations.<sup>1</sup>

Another conspicuous feature of the Lausanne controversy was the unusual lack of understanding on the part of the British Government—an apparent inability to comprehend the nature and strength of Dominion national feeling, and an apparent failure to grasp the position which Canada had assumed in regard to the Conference and Treaty.

Lord Curzon [writes Professor A. B. Keith] commenced an unparalleled course of blundering. He agreed with France and Italy . . . that the Empire should be represented by two delegates only . . . one should be himself, the other the British High Commissioner at Constantinople. None the less he assumed throughout that the Dominions would be quite willing to sign the Treaty arrived at without their intervention and consultation. Complaints have been made that Canada failed to make her meaning clear; but the accusation is unjustified. Throughout, the view of the Dominion Government must have been clear to any reasonable person, and it was set out in perfect frankness on 31 December, 1922. Canada had not been asked to send representatives, she would not sign, and must leave it to her Parliament to decide in due course what attitude would be adopted.<sup>2</sup>

<sup>1</sup> *Can. H. of C. Debates*, June 9, 1924, p. 2936.

<sup>2</sup> Keith, A. B., *Responsible Government in the Dominions* (1928), ii, p. 904.

There can be little doubt but that the British Government was guilty of either a mild duplicity or an excessive stupidity, and the odds are perhaps slightly in favour of the former. It is not impossible that under the guidance of Lord Curzon a definite effort may have been made to suppress some of the pretentious notions about Dominion equality which had recently been gaining wide acceptance and with which Lord Curzon notoriously had little sympathy. Such hostility would at least furnish a logical explanation for the succession of errors which marked the handling of the whole Lausanne affair by the Imperial Government: it would account for the disregard of Dominion rights of representation, for the persistent inability to comprehend the Canadian position when stated in dispatches and in person at the Imperial Conference,<sup>1</sup> and for the naïve endeavour to draw an analogy, which could not conceivably exist, between Versailles and Lausanne. The British Government, in short, may have made a pretence of stupidity as the simplest way of defeating the Canadian demands, while realizing that the longer the misunderstanding was allowed to persist the more difficult the Canadian position would become. But if such Machiavellian tactics are considered beneath the dignity of Ministers of the Crown, one other possibility may suggest itself to the apologist for Great Britain. The premature publication of the Chanak manifesto had been conveniently attributed in some quarters not to any fault of Mr. Lloyd George or Mr. Winston Churchill, but to an error on the part of a member of the British Cabinet secretariat.<sup>2</sup> Perhaps by some strange fate this same official had again been placed in charge of the errors of the Government, and was consequently responsible for all the incompetence and misunderstanding in the Colonial Office. In such fantastic speculations must one indulge in order to explain some features of the *affaire Lausanne*.

The Canadian Prime Minister, however, at no time complained of the Dominion's lack of representation at the Conference; although he did not hesitate to use it to support his contention that Canada's obligations were limited under the Treaty. His position was that Canada had no 'direct or immediate interest' in the negotiations; and she therefore

<sup>1</sup> Mr. Mackenzie King stated that on several occasions at the Imperial Conference in 1923 he endeavoured to make clear the Canadian attitude on the Lausanne issue. *Infra*, Section IV, D. 1, pp. 263-4.

<sup>2</sup> *Supra*, p. 62.

did not consider it vital that she should participate in the Conference as at Versailles and Washington. Moreover, it naturally followed that she could not be expected to accept the same responsibility as though she had been represented and had had her own plenipotentiaries sign the instrument in her name. Legally, Canada would recognize that she was bound by the Treaty and was at peace with Turkey; morally, her position would be quite different from that of Great Britain, and the extent of her obligations under the Treaty would be determined, when the need arose, by her own Parliament.

There is a distinction to be drawn [said Mr. Mackenzie King], between the purely legal and technical position in which this Dominion may be placed and the moral obligations which arise under treaties, depending upon the manner in which such treaties are entered into, upon the parties who are present, and the representative capacities in which they acted while negotiations were proceeding. Legally and technically Canada will be bound by the ratification of this treaty; in other words, speaking internationally, the whole British Empire in relation to the rest of the world will stand as one when this treaty is ratified. But as respects the obligations arising out of the treaty itself, speaking now of inter-Imperial obligations, this Parliament, if regard is to be had to the representations which from the outset we have made to the British Government, will in no way be bound by any obligation beyond that which Parliament of its own volition recognizes as arising out of the situation.<sup>1</sup>

Both the Lausanne controversy and the Halibut Fisheries issue began in the latter part of 1922; but the former did not reach its conclusion until 1924. Each represented a side of what is essentially the same position, namely, that the self-governing units in the Empire are primarily concerned with their own foreign policies; that each part should attend to its own affairs and not try to influence the others in what are especially their spheres of interest; that wherever these individual policies touch, there, and there only, will be the field where common action may be taken. In the Halibut Fisheries case Canada had contended that she should be allowed complete control over a matter which concerned her alone; in the Lausanne dispute Canada argued for the converse of this, that she did not desire control over a matter in which she had no immediate interest. Logically, she could do no other.

<sup>1</sup> *Infra*, Section IV, D. 1, pp. 268-9.

If Great Britain were to allow Canada to conclude her own Fisheries Treaty, Canada must allow Great Britain to conclude her own Treaty of Lausanne. The foreign policy of any self-governing unit of the Empire thus fell into two parts: that which concerned that unit alone, and that which it shared with the remainder of the Empire. Co-operation as at Versailles and Washington would characterize the policies falling in the second group; individual action, as at Lausanne and in the Halibut Fisheries, would characterize the first.

Lausanne was also, in a sense, complementary to Chanak. Chanak had drawn a distinction between a state of 'active belligerency' and one of 'passive belligerency', a state where one part of the Empire might be engaged in hostilities while another part abstained. Lausanne enunciated a companion doctrine of 'active responsibility' and 'passive responsibility'. One part of the Empire might henceforth undertake certain active obligations, while another part, though acquiescing in the policy of the former, would recognize in the commitment no pledge for it to participate in enforcing the terms of the undertaking. If more than one part of the Empire engaged in the making of a treaty, then of course all those parts became equally bound in every way to assume all its obligations.

This acceptance of different responsibilities by different parts of the Empire was, indeed, actually recognized in some degree in the Treaty of Lausanne itself. The preamble named 'the British Empire' as one of the contracting parties, yet Article 18 of the Straits Convention stated that the obligation to uphold the freedom of the Straits and the safety of the demilitarized zones rested on 'the High Contracting Parties, and in any case France, Great Britain, Italy, and Japan, acting in conjunction, will meet such violation' as determined by the Council of the League of Nations.<sup>1</sup> The Empire, in other words, was a party to the Treaty, but the enforcement of the Straits Convention rested more explicitly upon Great Britain.

Radical as this innovation was, however, it was by no means unheralded. It was perfectly consistent, as noted above, with the Halibut Fisheries case and Chanak. It was

<sup>1</sup> *The Treaties of Peace, 1919-23* (Carnegie Endowment for International Peace), ii, pp. 959, 1023, 1034.

also consistent with the treaty resolutions of the 1923 Imperial Conference; and Mr. Mackenzie King pointed out that in his opinion Lausanne came under those resolutions as a bi-lateral treaty imposing obligations on only one part of the Empire.<sup>1</sup> Moreover, the fundamental principle that active obligations could not be imposed on the Dominions without their positive consent had found a much earlier expression in the proposed Tripartite Treaty of Guarantee of 1919, which exempted the Dominions from its provisions unless they definitely expressed a desire to be included.<sup>2</sup> One of the surprising features of the Lausanne incident was that despite the manner in which it harmonized with the whole scheme of Empire development, it was able to cause so much consternation and misunderstanding.

### *E. The Imperial Conference, 1923*

The Imperial Conference of 1923<sup>3</sup> met under somewhat different circumstances from its predecessor two years before. In 1921 the Conference was still under the influence of the War, and it was unusually willing to reconcile or slur over divergent interests and to make, wherever possible, generous concessions. The Dominion representatives exhibited no disruptive nationalistic tendencies, but on the contrary favoured extensive Empire co-operation through the instrumentality of the Imperial Peace Cabinet, into whose hands the foreign policy for the whole Empire was entrusted. Even the occasional sceptic was not entirely without hope and was willing to concede the possibility that internal and external difficulties, when they occurred, might conceivably yield to compromise. In short, the general belief of 1921 was in Imperial unity; and the general spirit was one of willing co-operation.

It was intended that the Conference of 1923 would follow the earlier gathering in both form and purpose. The summons calling the Conference together referred to it as a meeting similar to that of 1921, and the agenda included such subjects as a report on foreign affairs during the past

<sup>1</sup> *Infra*, Section IV, D. 2, p. 272.

<sup>2</sup> *Supra*, p. 34.

<sup>3</sup> In addition to the Imperial Conference there was held at the same time an Economic Conference with a separate personnel. The Prime Ministers were, strictly speaking, members of the Imperial Conference only, but they constantly attended the meetings of the Economic Conference. Some subjects, such as Imperial preference, came within the scope of both bodies.

two years, the consideration of future foreign policy, and a discussion of Empire defence.<sup>1</sup> Such plans obviously contemplated the continuance of the Conference of Prime Ministers (or Imperial Cabinet) which would resume and bring up to date the policies outlined by its predecessor, while leaving, as in 1921, the application of these policies to the British Foreign Office. Lord Curzon, the Foreign Secretary, when speaking to the Primrose League on May 4, 1923, was therefore simply voicing the official opinion when he said:

We have to see how far by consolidation, by improvement of communications, we can develop a common policy in international matters, so that the Foreign Minister of this country, when he speaks, may speak, not for Great Britain alone, but for the whole British Empire. We made great advances in this direction two years ago. I can assure the Dominions that there is the warmest desire on the part of the Foreign Office to invite and to encourage their co-operation, and if the Foreign Minister of this country has in a way a more difficult task in the future, because he will not be able, as he has hitherto been, to speak only for home opinion or domestic action, think of the addition to his power and his strength that will result if, in speaking, he knows—and the world knows—that there lie behind him the sentiments and the might of the British Empire as a whole.<sup>2</sup>

But the mere intention to make the Conference of 1923 a second edition of the earlier meeting was not enough, for the events of the preceding two years had made a recurrence of the mood and atmosphere of 1921 quite impossible. The sentiment for Empire unity and the war-time enthusiasm had perceptibly cooled; the spirit of nationalism, encouraged in all probability by the apparent success of the League and the protection and shelter which it promised, had become more assertive; and the Dominions' lack of any real or permanent interest in the wide sphere of world politics had become even more pronounced than before. The personnel of the Conference had also materially changed. General Smuts was again representing South Africa; but the Canadian delegation, led by Mr. Mackenzie King, was much more nationalistic than in 1921, and those from the Irish Free State, appearing for the first time, were aligned on most issues with the delegates from Canada and South Africa. The Premiers of New Zealand and Australia, however, were

<sup>1</sup> *Can. H. of C. Debates*, June 5, 1923, p. 3453.

<sup>2</sup> *London Times*, May 5, 1923.

as imperialistic as before. Mr. Massey had attended both Conferences, and Mr. Bruce, who had succeeded Mr. Hughes, held substantially the same views as his predecessor. Newfoundland, unrepresented at the earlier meeting, occupied a centre position with a slight tendency to the left.

But far transcending these influences on the Conference were the recent constitutional incidents which made a complete return of the mutual trust and comradeship of 1921 almost inconceivable. The slip made by the British Government over Dominion representation at the Washington Conference and the position assumed by Canada regarding the Halibut Fisheries Treaty and the Lausanne Conference had not been entirely forgotten; but the one indelible memory was the Chanak Incident. Chanak cast its shadow over all the deliberations from the opening of the Conference to its close. It introduced a new wariness into the proceedings; a reluctance, at least on the part of Canada and South Africa, to enter into binding commitments, and a doubt and suspicion of British motives which had been unknown in the Empire since the days of Joseph Chamberlain.

The Dominions, however, were not alone in drawing a lesson from the Chanak Incident; for it had revealed to Great Britain in a startling manner the inadequacy of the existing arrangements and the immediate need for finding a remedy.

The breathless events of the last few months [ran an editorial in *The London Times*], when storm-cloud followed storm-cloud across the international horizon, served to show the weakness of the present links between the British Government and its partners overseas. Wherever the fault may lie, whatever the remedy may be, the fact is unfortunately plain. It required the sudden flash below the horizon, which was the warning of an impending war, to throw light upon the true facts of the situation. The bonds of Empire which had become more firmly welded than ever in the heat of battle had assumed strange shapes in the process of cooling off which came with peace. An appeal to the Dominions launched by the British Government met with many and sharply contrasted answers, from the unquestioning offer of armies to the polite request for further information and a distinct disposition to reason why. In short, the Empire awoke with a start to the realization that the machinery which had worked so well in time of war stood in need of examination.<sup>1</sup>

<sup>1</sup> May 24, 1923.

The unsatisfactory condition of Empire government and its management of foreign affairs thus placed the Conference of 1923 where it could scarcely avoid making a choice between two alternative courses. It could, on the one hand, abandon the idea of an Empire foreign policy, formulated by an Imperial Cabinet, and go back to the old system of occasional Conferences which would discuss matters of common interest but take no responsibility for foreign affairs. On the other hand, the Conference might decide to continue the plan adopted in 1921, but in this event it would also have to find a way of altering the machinery for consultation so that the Dominions could really share in the maintenance and remoulding of foreign policy between meetings. This last question, was, of course, the one which the Prime Ministers in 1921 had so signally failed to solve; but by 1923 the urgency of the problem and the serious danger latent in the existing conditions had been loudly proclaimed by the Chanak Incident. The Empire could not continue to loiter at the cross-roads indefinitely, and unless a genuine common policy was made immediately feasible, force of circumstances would soon settle the matter out of hand and render any deliberate choice for the future unnecessary.

The Report of the Conference,<sup>1</sup> regarded as a solution of this fundamental difficulty, was at first glance most disappointing, for it neither repudiated the Imperial Cabinet nor did it make any recommendations for improving the conditions as they existed. It abounded, however, in weighty silences; and a careful reading between the lines showed that the most important issue before the Conference had been, in effect, answered.

The vexed problem of consultation between Conferences was, for example, ignored by the Report, although the importance of the matter combined with the wide recognition of its urgency made its careful consideration by the delegates quite unavoidable. Why, then, was it not mentioned? The mere absence of an immediate solution would scarcely have produced so profound a silence, and a more likely explanation for such an unnatural omission is that the Conference could not come to an agreement on the subject. Moreover, the events of the preceding few years and the indirect references to foreign affairs in the Report lead one to conclude

<sup>1</sup> *Infra*, Section IV, E. 1, pp. 272-7.



further that the primary reason for the failure to agree was not due to divergent opinions on the mere machinery of consultation but rather went much deeper to the reluctance of certain Dominions to endorse the whole idea of a united foreign policy at all. Canada's stand on the Lausanne issue, for example, clearly indicated a pronounced change of heart since Versailles, and at least one other Dominion shared the Canadian attitude on such questions. The war enthusiasm had passed; the earlier ambition to participate actively in the formation of common foreign policies and to join in enforcing them had ceased to attract; and the possibilities beneath the surface had been, since Chanak, entirely too real and promised to yield little profit and much loss. The failure of the Imperial Conference to deal with inter-Imperial consultation can thus in all probability be ascribed to the fact that some of the members had relinquished the earlier conception of one Empire policy on all foreign affairs, although the treaty clauses in the Report suggested that Empire co-operation would still be retained whenever the interests of all made united action possible and desirable.

The virtual abandonment of any hope of maintaining life in the Empire policy between Conferences also meant that the Imperial Peace Cabinet was about to seek oblivion. Again, no mention was made of this very important fact; but the omissions were eloquent. The Report did not mention, as in 1921, the desirability of frequent meetings; nor did it make any provision for future Conferences; nor did it propose any closer co-operation between sessions; while one searches in vain for positive resolutions which would empower Lord Curzon to speak, as he wished to speak, with 'the might of the British Empire as a whole' behind him.

Great care was taken by my colleagues and myself [said Mr. Mackenzie King four years later] to make it clear that we had no authority from the Parliament of Canada to become members of an Imperial council seeking to lay down policies with regard to Imperial affairs; that we were there as representatives of the Dominion of Canada to confer with representatives of other Governments of the Empire, to reach such conclusions as it might be possible to reach and then to report them to our respective Parliaments, but that we had no authority whatever to bind in any particular in advance the Parliament of our country.<sup>1</sup>

<sup>1</sup> *Can. H. of C. Debates*, Mar. 29, 1927, p. 1645.

Foreign affairs were discussed at length, it is true, and an approval in very general terms was given to the policies of the Imperial Government during the preceding two years; but the idea of an Empire executive had contemplated something far more flattering to the Dominions than *ex post facto* resolutions of praise for British wisdom. Moreover, the visiting delegates were most careful to avoid committing their respective countries to any definite action in the future, and the Report went out of its way to anticipate any possible misinterpretation by stating at the end of the section dealing with foreign relations that:

This Conference is a conference of representatives of the several Governments of the Empire; its views and conclusions on Foreign Policy, as recorded above, are necessarily subject to the action of the Governments and Parliaments of the various portions of the Empire, and it trusts that the results of its deliberations will meet with their approval.<sup>1</sup>

In short, the centralizing characteristics of the Imperial Cabinet were quietly dropped, and the non-committal conversations of the old Imperial Conferences as quietly resumed.<sup>2</sup> The Empire centralized executive had become that most pathetic of all sights—a precedent without descendants.

The Conference of 1923 did, however, definitely commit itself to one important change regarding the treaty-making power in the Empire. This was a direct consequence of issues raised at Lausanne and in the Halibut Fisheries Treaty, and the precedent established in the latter instance was officially regularized and made generally applicable to the negotiation, signature, and ratification of all bilateral political, commercial, and technical treaties. Henceforth the Dominions were to conclude their own international agreements without even a nominal control by Great Britain. Provision was made, however, whereby all parts of the Empire were to be kept fully informed of negotiations entered into by any one member, and each was to be allowed to express its view or to participate in the proceedings if it so desired. At international conferences the Empire would normally be represented as at Versailles and Washington by the British Empire Delegation.<sup>3</sup>

<sup>1</sup> *Infra*, Section IV, E. 1, p. 275.

<sup>2</sup> For a more detailed development of this argument, cf. Dafoe, J. W., 'Did the Imperial Conference Fail?', *infra*, Section IV, E. 2, pp. 277-83.

<sup>3</sup> *Infra*, Section IV, E. 1, 3, and 4, pp. 275, 283-95.

The Report of the Conference of 1923, except for the above sections regarding treaties, was therefore very unsatisfactory; and the most reasonable explanation of its deficiencies was that the delegates could not agree on the fundamental questions of Empire aims and organization. One wing of the British Government under Lord Curzon wished to perpetuate the Imperial Cabinet and the one common foreign policy; Canada, joined in some measure at least by South Africa and the Irish Free State, not only repudiated the whole Cabinet idea but apparently evinced no marked anxiety to be consulted at all on questions of remote interest, while Australia and New Zealand favoured one central foreign policy, but wanted inter-Imperial consultation to be made really effective.<sup>1</sup> The arrangement of 1921 had been wrecked by circumstances and deliberate governmental action, and there was as yet no agreement as to what should take its place in the future. The natural result was that the Conference, in its endeavour to present a unanimous report, was forced through compromise to emasculate many of its resolutions and to ignore the most controversial issues completely. Hence the omission of any reference to the fate of the Imperial Cabinet and the development of inter-Imperial communication; hence the difficulty of reconciling the actual review of foreign affairs by the Conference with its implied repudiation of a common Empire policy; hence the vague and evasive resolutions on Imperial defence. The Report represented the highest common denominator on which the Conference could agree; and the document's most revealing feature was the extreme poverty of these resolutions which alone had been able to gain general acceptance. No more significant commentary could have been written on the events of the preceding two years.

#### *F. The Recognition of Soviet Russia and the Russian Treaties, 1924*

The British Government in 1924 evidently adopted the policy in inter-Imperial relations of making all decisions on

<sup>1</sup> 'We have to try to ensure', said Mr. Bruce to the Australian Parliament on March 1, 1923, 'that there shall be an Empire foreign policy which, if we are to be in any way responsible for it, must be one to which we agree and have assented. . . . Unless some better arrangements can be made, the position of an outlying Dominion like Australia will become intolerable. . . . There must be a better system, so that we may be consulted and have a better opportunity to express the views of the people of this country.' *Journals of the Parliaments of the Empire*, 1923, p. 336.

its own responsibility, and apologizing afterwards to the Dominions for its oversight in failing to consult them. Such, at least, was the course pursued in regard to Russian relations, and followed a month or two later in dealing with representation at the Inter-Allied Conference in London.

One of the first acts of the new Labour Government in Great Britain after its accession to office was the recognition of Soviet Russia. This step was taken without consulting the Dominions in any way, and was therefore a distinct breach of the established understanding on the conduct of Empire foreign policy. Canada indicated her disapproval of such tactics by issuing her own formal recognition some weeks later,<sup>1</sup> and the Prime Minister of Australia announced that the British Government had given assurances which led him to believe that the incident would not form a precedent for the future.<sup>2</sup> Subsequent events, however, have not entirely justified the hopes of Mr. Bruce, for the Dominions have sometimes been consulted on similar matters, and have at other times been ignored.<sup>3</sup>

The British Government, having recognized Russia, next proceeded to adjust the relations between the two countries by entering into two agreements: a treaty on general unsettled questions, and a treaty of commerce, which made mutual economic concessions and provided for Dominion adherence if they so desired. These treaties were concluded without consulting the Dominions, although the latter were kept in touch with the negotiations—a procedure explained by Mr. Bruce<sup>4</sup> as being quite correct under the Imperial Conference agreements of 1923, which allowed any part of the Empire freely to conclude treaties which concerned itself alone. Unfortunately for the argument, other parts of the Empire besides Great Britain were involved, for the general political treaty contained a number of clauses which directly affected the rights of the Dominions and their citizens.<sup>5</sup> No Dominion protest, however, was lodged, doubtless because the incident was overshadowed by the more important ones of the Lausanne and Inter-Allied Conferences.

<sup>1</sup> This has been generally questioned on the ground of its very doubtful legality.

<sup>2</sup> *Infra*, Section IV, F, pp. 295-6.

<sup>3</sup> Cf. Keith, A. B., *Responsible Government in the Dominions* (1928), ii, p. 907; 'Notes on Imperial Constitutional Law', *Journal of Comparative Legislation*, 1925, part i, pp. 105-6; *ibid.*, 1929, part iv, p. 250.

<sup>4</sup> *Infra*, Section IV, F, pp. 295-6.

<sup>5</sup> Keith, A. B., *Responsible Government in the Dominions* (1928), ii, pp. 902-3.

*G. The Inter-Allied Conference on the Dawes Report, 1924*

The Canadian Government refused to approve of the Treaty of Lausanne on March 24, 1924. Three months later, while this and the Russian issues were still being debated throughout the Empire, the British Government precipitated another minor crisis, which almost exactly reproduced one part of the Lausanne affair. The dispute arose on the question of Dominion representation at the Inter-Allied Conference which was being called to consider the application to Germany of the Dawes plan of reparations.

The Prime Minister, Mr. Ramsay MacDonald, first approached the Dominions and India in regard to the holding of a preliminary meeting to discuss the policy and representation of the Empire at the coming Conference, on the ground that 'the procedure, as regards the association of the various Governments of the Empire in its work, should clearly be governed by the principle of the resolution as to the negotiation, etc., of Treaties agreed to by the Imperial Conference of 1923'.<sup>1</sup> To this the Dominions and India readily consented. The Government of Canada, evidently considering that, unlike Lausanne, this was a matter of 'immediate and direct interest', pointed out that under the Resolutions of 1923 the Dominion Government would naturally expect to receive the same separate representation as it had been given at Versailles and Washington. The Colonial Office thereupon began to make excuses, and endeavoured to persuade the Canadian Government that separate representation was neither necessary nor desirable and might not be easily arranged. Mr. Mackenzie King, however, was persistent; and the British Government was at last forced to admit that it had already agreed with the other Powers to restrict the Empire delegation to only three members, at least two of whom, the dispatch maintained, must represent the Government of Great Britain. This was the first intimation<sup>2</sup> to the Dominions that their constitutional rights of representation had been taken away without their consent,<sup>3</sup> and it was

<sup>1</sup> This and the subsequent correspondence is given below, Section IV, G. 1, pp. 296-303.

<sup>2</sup> The correspondence began on June 25, and this fact was not divulged until July 11.

<sup>3</sup> The Irish Free State, like Canada, demanded separate representation, but as the Conference was deemed to be dealing with matters arising under the Peace Treaty, only the signatories to that Treaty were considered to be entitled to send

immediately followed by a protest from the Canadian Government in the following terms:

It would seem that the preliminary conference was not, as we had been led to believe, so much for the purpose of arranging for representation of the Dominions and India on a British Empire Delegation as for the purpose of informing the Dominions and India of what, in advance of consultation with their representatives, had been decided upon with respect to representation at the Inter-Allied Conference. This is precisely the procedure adopted with respect to representation at the Lausanne Conference to which exception has been taken, concerning which, we have been told, we should have spoken more plainly at the time, and which for many reasons, we had hoped would not be repeated. We regret that we are unable to acquiesce in this method of proceeding, or to depart from the position which we have consistently maintained of having Canada's right to representation at the Inter-Allied Conference determined in accordance with the precedents established at Versailles and Washington, and confirmed by the 1923 Conference Resolution which our Government has formally approved. With regard to possible objection by other countries we deem it sufficient to observe that the British Empire has an absolute right to determine its internal organization which in the relevant aspect has already received international recognition. In case the rules of procedure at the Inter-Allied Conference do not permit the entire British Empire Delegation to be present at the sessions of the Conference, we are quite prepared to agree that the representation at such Sessions shall be determined from time to time by the Delegation.<sup>1</sup>

The Canadian Government, having entered its objection to the action of the Imperial authorities, thus agreed to accept a limited representation through the British Empire Delegation. The final arrangement was that the Empire was to be represented by three members, two from Great Britain and one from the Dominions and India, the latter chosen in rotation from a common panel whose members were to be constantly consulted throughout the Conference. Representatives of the Dominions and India were also permitted to be present at any session when it was not their turn to sit as members of the official Delegation. The British Prime Minister gave his assurance that the whole arrangement was exceptional (like the recognition of Russia) and was not to be treated as a precedent; and the Conference was officially informed of this fact.

delegates. *Can. H. of C. Debates*, July 17, 1924, p. 4688; Toynbee, A. J., *The Conduct of British Empire Foreign Relations since the Peace Settlement*, p. 93 n.

<sup>1</sup> *Infra*, Section IV, G. 1, p. 301.

The British Government had thus indicated once more its carelessness of Dominion rights and its indifference to Dominion national sentiment. No other explanation, save a stupidity so excessive that it becomes grotesque, can possibly satisfy the facts. The invitation of Chanak and the abandonment of the Dominions at Lausanne a few weeks later had certainly given no evidence that the British Government was unduly careful of Dominion constitutional privileges; but many explanations had been offered, and the future rights of the Dominions at international conferences had apparently been safeguarded by the Treaty Resolutions of 1923. Yet within a few months the British Government had not only omitted to consult with the Dominions regarding the recognition of Soviet Russia, but had become a party to an arrangement which repeated the errors of Lausanne and disregarded both the spirit and letter of the Resolutions of the recent Imperial Conference.

Several attempts have been made to justify the extraordinary behaviour of the British Government on the ground that the conditions existing at the time of the Conference were most exceptional. The Colonial Secretary, for example, endeavoured to clear his Department of blame by stating that a conference of this nature could not be made 'a mass meeting', that it was essential to keep the numbers small, and that if the Dominions and India were to have six representatives, other nations would have to have larger delegations.<sup>1</sup> Mr. Lloyd George, however, pointed out in reply that the Versailles precedent could have been followed by admitting the Dominions to plenary sessions on the same basis as the secondary Powers, while filling the smaller Commissions at the Conference from a panel of British Empire delegates.<sup>2</sup> In attempting to answer this the Colonial Secretary merely begged the question by stating that the Government was unable to follow Versailles because it had already agreed to three representatives.<sup>3</sup>

Perhaps the most eloquent pleader on behalf of the British Government is Professor Arnold Toynbee, who defends its action in both the Lausanne and Inter-Allied Conferences on the ground of the grave emergency existing on each occasion:

On the eve of both the Lausanne and the London Conferences, the

<sup>1</sup> *Infra*, Section IV, G. 2, p. 306.

<sup>3</sup> *Ibid.*, p. 307.

<sup>2</sup> *Ibid.*, p. 307.

pressure of the international situation was acute. If the opening of the Lausanne Conference had been delayed, there might have been a recrudescence of the General War; if the opening of the London Conference had been delayed, the economic situation in Germany might have taken another grave and perhaps irreparable turn for the worse. In either case, there were immediate possibilities of the utmost gravity; and in such a situation it was morally almost impossible for His Majesty's Government in Great Britain to take upon themselves the responsibility for occasioning delay by insisting upon a particular form of representation for the *British Empire*—a form which to the world at large (unfamiliar, as it was, with the facts of 'Dominion status') would appear in the light either of a pedantic point of procedure or else of an excessive pretension upon which it was unpardonable for any Government to insist at so great a risk to the general interests of mankind. . . . His Majesty's Government in Great Britain found themselves in a quandary between the pressure of the international situation on the one hand . . . and the insistence of certain of the Dominions, on the other hand, upon the preservation of rights which they regarded themselves as having acquired at Paris in 1919 once for all. It was not to the discredit of His Majesty's Government in Great Britain that, in this dilemma, they twice took a course which safeguarded the international situation at the risk of imposing a strain upon British inter-Imperial relations.<sup>1</sup>

There is, without doubt, some truth in the above contention that the international situation at the time of the *Lausanne Conference* made any undue delay dangerous, and the same might be said, though in a less degree, of the *Inter-Allied Conference* in London.<sup>2</sup> But even this admission falls far short of clearing the British Government of blame: it merely means that the Empire was perhaps justified in waiving some of its recently acquired privileges of representation rather than risk a delay in the proceedings by insisting on these privileges being respected. It might excuse, in other words, the concessions in representation made by Great Britain to foreign Powers; but it could not by any means excuse the manner in which the decision to make these concessions had been reached within the Empire. At Lausanne,

<sup>1</sup> Toynbee, A. J., *The Conduct of British Empire Foreign Relations since the Peace Settlement*, pp. 97-8.

<sup>2</sup> Space does not permit a discussion on this point, but the following excerpt from an editorial of *The London Times* (July 19, 1924) is worthy of consideration: 'Urgent and vital as it was to lose no time in seizing the occasion of the Dawes Report, it would have been better worth while to run no risk of misunderstanding with the Dominions through any failure to settle with them beforehand the exact conditions of their participation. The basis even of a final agreement in Europe would be dearly bought at the price of any legitimate and lasting grievance on their part.'



the Imperial Government had not only agreed to be represented by two delegates, but had also named them, before the Dominions were approached on the subject. Even more indefensible tactics were followed before the Inter-Allied Conference. As early as June 6, 1924, the British Government had been asked *in the House if it intended to consult with the Dominions regarding the recommendations of the Dawes Report*; yet the matter was not broached with the Dominions until June 28, and the latter were not informed of the commitment of the British Government to three delegates until July 11, when the matter had become too urgent to admit of delay. There seems no escape from the conclusion that the British Government deliberately avoided discussing the question with the Dominions until it had agreed on a limitation of the number of Empire representatives, and that it had then not disclosed this agreement until further concealment had become impossible.

The real Dominion grievance, therefore, was by no means confined to their loss of delegates, but rather to the manner in which they were deprived of their rights, not only without any previous consultation, but with an actual concealment of facts on the part of the British Government. No matter how serious the European situation might have been, it could not explain or justify such conduct. Moreover, there is no reason to believe that Canada, the chief complainant, would have refused to relinquish her rights of separate representation had she been asked to do so because of the extreme gravity of European conditions. This aspect of the question was never mentioned by the British Government in the early correspondence, but the whole emphasis was placed on the argument that the Dominions would have little real interest in the proceedings of the Conference. Finally, on July 11, when Canada had refused to yield to these suggestions, the same cable which conveyed the information about the concessions already made by the British mentioned the 'urgent necessity' of the adoption of the Dawes Report and the 'disastrous consequences' of its postponement. The Canadian Government in reply strongly protested at the procedure which had been followed, but in the same dispatch added that if the rules of the Conference did not permit of separate representation it was 'prepared to agree that the representation at such Sessions shall be determined from time to time

by the [British Empire] Delegation'. Thus the first mention of Professor Toynbee's argument regarding the serious international situation had led to immediate concessions on the part of the Canadian Government. In view of the lack of courtesy recently shown by the Imperial Government, Christian charity could do no more.

The form which Empire representation assumed at the Inter-Allied Conference was dictated by the emergency, but it was by no means unsatisfactory as a permanent solution of the question for small international gatherings. If the British Empire intends in the future always to insist upon its full quota of delegates whatever the occasion, then, owing to other countries increasing their delegations in self-defence, all small conferences will thereby be made impossible. A reasonable solution would be to recognize different schemes of representation for the Empire depending upon the size of the gathering and the nature and extent of the Dominion and British interests at stake, using as the chief guide in all cases the standing which would be given to the Dominions were they existing as independent nations. The most extreme Dominion autonomist could expect no more considerate treatment than that. Thus in a large Conference the Dominions and India would be entitled to seats in their own right as at Versailles; in a smaller Conference they might, if their special interests warranted it, be represented separately, but as a rule they would act through a British Empire panel with the additional privilege, perhaps, of being present as observers at all plenary sessions. The representatives from Great Britain, however, should not receive, as they did at London, any special guarantee of seats on the British Empire Delegation, although their greater importance and wider interests would inevitably produce much the same result in practice.<sup>1</sup>

#### H. *The Proposed Imperial Conference, 1924*

The conduct of a common foreign policy for the Empire, so confidently undertaken in 1921, had proved two years later to be almost an impossible task. The effort to secure full understanding and co-operation had been successful at the Washington Conference, but on most occasions it had

<sup>1</sup> The three forms of Empire representation suggested by the Imperial Conference of 1926 did not include any modelled on the Inter-Allied Conference. *Infra*, p. 107; Section V, A. 3, pp. 340-2.

either broken down completely or had resulted in little better than a lukewarm and unsatisfactory association. The most obvious cause of the difficulty was the lack of effective means of consultation between Great Britain and the Dominions, both at international conferences and in the normal day-to-day interchange of views between governments. This need had been recognized for some years; it had been discussed at the Imperial Conferences of 1921 and 1923; and it had been a contributory cause of the constitutional difficulties encountered at Chanak, at Lausanne, and at London. There were, to be sure, many indications that the differences of view which had emerged at these crises were really fundamental and could not be satisfactorily met by any mere change in machinery; but the belief in Imperial unity died hard, and as a consequence these signs were often either unperceived or disregarded. Many people in both Great Britain and the Dominions still felt that more frequent consultation and a freer interchange of views might quite conceivably bring to an end the misunderstandings and prepossessions which had hitherto made diplomatic unity in any real sense impossible.

The British Government, inspired by this feeling and by the memory of its own recent embarrassment concerning representation at the Inter-Allied Conference, decided that it should at least make an effort to improve the means of consultation before further crises made new breaches in the wall of Imperial unity. The Colonial Secretary therefore announced, while the Inter-Allied Conference was still in session, that the Government had been endeavouring to summon a small informal Imperial Conference, whose chief purpose would be to find better methods of communication and consultation between Empire Governments. The invitation gave certain suggested topics which might be suitable for discussion, but all Dominions were frankly asked to submit any ideas of their own which would help in finding a solution of the difficulty. The response was varied.<sup>1</sup> Canada considered the existing situation inevitable and professed to be generally satisfied with conditions as they were, while she was apparently somewhat suspicious of certain of the changes which had been proposed by the Colonial Office. Australia discussed the problem at length and made several suggestions

<sup>1</sup> *Infra*, Section IV, H, pp. 308-14.

for improvement, but she saw no need for a Conference which was apt to make hurried decisions upon matters which, if left alone, would gradually find their own solution. Some of the Dominions found it impossible to send representatives at the time mentioned in the original dispatch. After much correspondence and several postponements the suggested meeting came to an abrupt end by the defeat of the MacDonald Government in the general election of October 1924. The new Unionist Government announced that inasmuch as the proposals of its predecessor were of doubtful value, and as the time which had elapsed since the last Conference was insufficient to permit of a profitable re-examination of the subject, the Conference would be dropped. The Government tactfully added that it would always welcome any opportunity for personal consultation with representatives from the Dominions.<sup>1</sup>

One suggestion made by Australia in the above correspondence was that the Dominions should keep in London special officials to promote closer consultation and understanding with the British Foreign Office. This proposal was actually carried out by the Australian Government in the latter part of 1924 when it created a branch of the Department of External Affairs attached to its High Commissioner's Office with a Liaison Officer in charge. His chief duty, as the name implies, is to serve as a link between the two Governments, and he thus remains on the staff of the Australian Prime Minister while having the full confidence of the British Foreign Office and access to its confidential papers. He is regarded 'as a personal representative of the Prime Minister of Australia, and in that capacity can see whatever the Prime Minister of Australia himself might wish to see or might wish to be informed about'.<sup>2</sup> He is thus able to keep the Commonwealth Government continually in touch with foreign affairs and British policy, and he sorts out and amplifies the information which is regularly sent to Canberra by the Government of Great Britain.

A further change which was made in British and Dominion communications was the creation in 1925 of a new Secretaryship of State for Dominion Affairs. The Dominions Office was henceforth to be administered separately

<sup>1</sup> *Parl. Papers (G. Britain)*, 1925, Cmd. 2301, pp. 24-6.

<sup>2</sup> The Secretary of State for the Dominions, *Journals of the Parliaments of the Empire*, Oct. 1925, p. 680.

from the Colonial Office, although for reasons of political convenience the two Secretaryships were to be combined in the same person. The purpose of the change was to recognize more explicitly the transformation which had occurred in Dominion status, and also to separate work which was primarily administrative and directive from that which was political, consultative, and quasi-diplomatic. The Dominions Department, as Mr. Runciman aptly said, was expected to act like 'a Foreign Office with a family feeling'.

### I. *The Appointment of an Irish Minister to Washington,* 1924

Canada had secured the right to send a diplomatic representative to the United States in 1920,<sup>1</sup> but no such appointment was made until 1926. In the meantime the Irish Free State, empowered by the guarantee of Dominion status in the Anglo-Irish Agreement,<sup>2</sup> appointed Professor Timothy A. Smiddy as Minister Plenipotentiary to Washington in 1924.<sup>3</sup>

Two important departures were made from the original arrangement with Canada in 1920. It had been intended at that time that the office of the Minister would be situated in the British Embassy, and that the Canadian Minister would act for the British Ambassador in the latter's absence. Neither of these projects was carried out in 1924. The Irish Free State set up its own separate Ministry, and although the British and Irish representatives at Washington were to be in close touch with one another, the idea of the Free State Minister acting as a substitute was not mentioned. When Canada made her first appointment to the United States in 1926 Mr. Mackenzie King, who had always looked askance at the idea of a vice-Ambassador, specifically stated in the dispatch to the British Government that:

It is not in contemplation to renew the provision suggested in 1920 whereby the Canadian Minister would be a member of the British Embassy and would, in the absence of the Ambassador, have charge of Imperial as well as Canadian interests.<sup>4</sup>

<sup>1</sup> Cf. *supra*, pp. 35-6; *infra*, Section II, D, p. 202.

<sup>2</sup> Article II of the Articles of Agreement reads: 'The position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada.' *Infra*, Section III, C, pp. 230-3.

<sup>3</sup> *Infra*, Section IV, I, pp. 314-15.

<sup>4</sup> *Can. Sess. Papers*, 1927, No. 131, p. 3.

In 1924, as in 1920, the British Government announced that the new representation 'would not denote any departure from the principle of the diplomatic unity of the Empire': a statement which seems to have had little purpose except to reassure the world—and the British Government—that things are not always what they seem. The communication to the American Government explained that matters of general Imperial concern would naturally continue to be dealt with by the British Embassy, but that all matters concerning only the Irish Free State were to go through the hands of the Irish Minister alone. The Empire, therefore, no longer spoke as one; and if its diplomatic unity was not definitely impaired thereby, the effort to maintain that unity intact became much more difficult. This centrifugal tendency naturally became more and more pronounced as Dominion legations were later established throughout the world. In 1936 there were no less than eleven Ministers from Canada, South Africa, and the Irish Free State representing their respective Dominions in foreign capitals.

#### J. *The Registration of the Anglo-Irish Agreement with the League of Nations, 1924*

The Irish Free State raised another constitutional issue when its Government registered the Anglo-Irish Articles of Agreement of 1921<sup>1</sup> with the League of Nations. The British Government objected to such registration on the ground that the Covenant of the League was not intended to govern the relations *inter se* of the various parts of the British Commonwealth, and consequently that Article 18, which dealt with the registration of treaties, did not apply to agreements of this kind. The Free State, on the other hand, insisted that all League Members were equally bound by Article 18 and that the Dominions were in this regard no different from any independent State. The Secretary-General of the League found himself in an awkward predicament; but he took the position that his duty was simply to accept without question all treaties and engagements sent to him for registration. On this understanding the Agreement was duly registered and published by the League.<sup>2</sup>

The point which had been raised was of great importance,

<sup>1</sup> Cf. *supra*, p. 52; *infra*, Section III, C, pp. 230-3.

<sup>2</sup> *Infra*, Section IV J, pp. 315-16.

viz. whether the relations between different parts of the Empire were to be considered in essentials international relations or not. The Free State's contention was really an assertion that its relationship to Great Britain was the same as that to a foreign country; the British argument denied this, and asserted that the self-governing units of the Empire stood in a quite different position owing to their partnership under the Crown. There was some doubt at the time as to the attitude of the other Dominions on the matter, but the Imperial Conference of 1926 passed a resolution which involved the same general principle and denied the validity of the Irish contention.<sup>1</sup> The Free State, however, does not appear to have deviated from its earlier position, and in 1926 it registered with the League a number of technical agreements which it had concluded with the Dominions and India.<sup>2</sup> It should, perhaps, be added that when Canada filed the Halibut Fisheries Treaty with the League in 1925, no such fundamental issue was involved. The Treaty was drawn between two separate nations, one of which was not a member of the Empire, and the only new feature of its registration was that it was presented directly by the Canadian Advisory Officer at Geneva instead of being transmitted through the agency of the British Government.<sup>3</sup>

### K. *The Treaty of Locarno, 1925*

The Treaty of Locarno brought the Period of Decentralization to its close. For three years the idea of a common Empire foreign policy had suffered one rebuff after another—Chanak, the Halibut Treaty, the Imperial Conference of 1923, the Lausanne Conference and Treaty, the Russian recognition and Treaties, the Inter-Allied Conference, the appointment of an Irish Minister at Washington, and the registration of the Anglo-Irish Agreement with the League of Nations. The immediate cause of all these departures from the principles enunciated at the Prime Ministers' Conference of 1921

<sup>1</sup> For a full discussion of this somewhat complicated problem, cf. Baker, P. J. N., *The Present Juridical Status of the British Dominions in International Law*, pp. 289-324; Resolution V (a) of the Report of the Imperial Conference, 1926, *infra*, Section V, A. 3, p. 339.

<sup>2</sup> *League of Nations, Treaty Series*, 1926, vol. 56, pp. 291, 333, 373, 389, 415. This action is quite consistent with the attitude the Free State has adopted on the settlement of disputes within the Empire, when it has steadily advocated the use of arbitrators from foreign countries in preference to those from Great Britain and the Dominions. For its action on the so-called Optional Clause, cf. *infra*, p. 113.

<sup>3</sup> *Ibid.*, 1925, vol. 32, p. 93.

was sometimes of Dominion origin, as in the Halibut Treaty, but was as often found in the action of the British Government, as at the Lausanne and Inter-Allied Conferences. On all these occasions, however, Great Britain had repeatedly emphasized her desire to preserve unimpaired the diplomatic unity of the Empire, and had insisted that all must speak with one voice on matters of general interest or of outstanding international importance. The Dominions, on the other hand, had always been inclined to stress their own local interests rather than those of the Empire as a whole and had often been as a consequence somewhat careless of the Imperial implications of their individualistic policies. Locarno witnessed a sudden and significant change. Great Britain, in her turn, now pleaded an overruling local interest which ran counter to the more general policy of the Empire. The natural result was that the movement towards decentralization was greatly accelerated, and even the Imperial Government was compelled to admit that unity of Empire foreign policy was no longer feasible.

The Locarno Treaty was the name given to nine documents initialled at Locarno on October 16, 1925, and signed at London on December 1 of that year. It was an agreement primarily between Germany, Belgium, France, Great Britain, and Italy (and to a lesser degree, Poland and Czechoslovakia), which aimed at eliminating war within a circumscribed area. The chief provisions were the demilitarization of the Rhineland, the guarantee of Germany's western frontiers, and the arbitration and conciliation of disputes between certain of the signatory Powers.

Locarno had been preceded by a number of unsuccessful efforts of a somewhat similar kind. In 1919 it had been proposed that Great Britain and the United States should agree to come to the assistance of France in the event of an unprovoked attack by Germany; but the United States would not accept.<sup>1</sup> In 1921-2 the Anglo-French security pact, discussed by Lloyd George and Briand, had come to nothing.<sup>2</sup> In 1923 the League of Nations had taken the initiative with a Draft Treaty of Mutual Assistance—a security agreement of much wider scope—but all the leading nations, with the exception of France and Belgium, either rejected the proposal or made amendments to it. In 1924 the League Assembly had put

<sup>1</sup> *Supra*, p. 34.

<sup>2</sup> *Supra*, pp. 46-7.



forward another general scheme known as the Geneva Protocol, which, while accepted by France and seventeen other nations, was killed by its rejection by Great Britain and the Dominions, and the inaction of Japan, Holland, and Italy. The next move, the Treaty of Locarno, was successful.

In all these proposals and agreements the interests of the Dominions were fully protected. Sir Robert Borden had obtained the insertion of a clause in the draft of 1919 which exempted the Dominions from its operation unless they gave their consent, and this was repeated in the abortive Anglo-French proposal of 1921-2. The next two agreements were naturally submitted to the Dominions for their approval by virtue of their membership in the League of Nations. Locarno followed the earlier precedents, and contained an exempting clause.

The adequate protection of Dominion interests, however, served but to illustrate how difficult, if not impossible, it was to secure a common foreign policy and uniform commitments for the Empire. The first two proposals were never very close to acceptance, but there can be no doubt that had they materialized, certain of the Dominions would have availed themselves of the exclusion clause. In 1923 both Great Britain and the Dominions happened to be opposed to the Treaty of Mutual Assistance; but it was generally realized at the time that it was unduly optimistic to expect a coincidence of opinion on all future questions of a similar nature. When the Geneva Protocol was being considered, the British Government desired to secure a common Empire opinion on the question and endeavoured to hold an Imperial Conference for the purpose, but the meeting was found to be impracticable. Again, however, the issue did not have to be faced, for Great Britain and the Dominions were able to agree on the rejection of the Protocol. But the Treaty of Locarno evoked no such unanimity. The policy of Great Britain was explicit, her commitments in western Europe were stated in black and white, and the Dominions, though sympathetic, could not see their way clear to endorse them. The period of fortunate coincidences had come to an end.

The Dominions sent no representatives to the Locarno Conference, but on this occasion no one could justly be blamed for the omission. The British Government found itself in 1925 in an unenviable position. It had rejected the

Geneva Protocol and felt bound to offer a substitute, yet it was unable to produce any policy which had the *imprimatur* of the Empire. It had endeavoured to call an Imperial Conference for the purpose of discussing the whole situation and arriving at a common decision, but the meeting could not be arranged to suit the Dominions. Great Britain was thus being pulled in two opposite directions. She was being forced by the emergency and her position in Europe into immediate and decisive action, while at the same time she was being held back by the danger of attempting to speak for the Empire on a highly controversial question. Moreover, there was every reason to believe, in view of the reasons recently given by the Dominions for rejecting the Geneva Protocol,<sup>1</sup> that they would not welcome any additional obligations other than those which they had already assumed under the League of Nations. The Imperial Government therefore resorted to the device of sending delegates to Locarno who represented Great Britain rather than the Empire, while informing the Dominions of the status of the delegates and the circumstances leading to their appointment. The Dominions were not consulted during the negotiations, but they were kept continuously informed of their progress. They were, moreover, assured that they would in no way be bound without their consent,<sup>2</sup> a promise which was later implemented by Article 9 of the Treaty which excluded the Dominions and India from its provisions unless the individual Governments chose to accept its obligations. The Treaty of Locarno was negotiated like a second Lausanne, but with the significant difference that, whereas the earlier treaty had endeavoured to commit the whole Empire, the later one bound only that part which was actually represented at the negotiations.

On these terms the Dominions were quite content to remain outside the Conference, and no protest was made save one from General Smuts, who had now become Leader of the Opposition in South Africa.<sup>3</sup> The European tangle was regarded as predominantly the concern of Great Britain, and the Dominions had no desire to send representatives and consequently accept obligations in a matter which affected them so remotely and was charged with such potentially

<sup>1</sup> Cf. Dewey, A. G., *The Dominions and Diplomacy*, ii, pp. 206-10.

<sup>2</sup> *Can. H. of C. Debates*, June 26, 1925, p. 5049.

<sup>3</sup> *Infra*, Section IV, K. 4, p. 322; cf. also Section IV, K. 2 and 3, pp. 319-20, 345.

dangerous consequences. They had, in short, come to accept the Canadian position at the time of the Lausanne Conference: they had no 'direct or immediate interest' in the Locarno negotiations, and they therefore were willing to allow Great Britain to enter into whatever engagements she wished on the understanding that they were not to be bound by her action. No surprise was felt, therefore, when neither the Dominions nor India availed themselves of the opportunity under Article 9 to become parties to the Treaty.

The real revolution, however, occurred in Great Britain, which had concluded for the first time a vitally important political treaty which explicitly exempted the Dominions from its operation. In many quarters this was naturally viewed with dismay, and Mr. Ramsay MacDonald hailed it as the final break-down of an Empire foreign policy which for three or four years had been on the verge of collapse.<sup>1</sup> Nor was such a description extreme. Unity of foreign policy had disintegrated before the constant attack of divergent interests throughout the Empire. The position of Great Britain as a European Power had finally driven her into conflict with the Dominions, whose chief desire was to withdraw from active participation in world affairs and to abstain from any act which would involve them in European wars. Therein lay the fundamental difference of outlook: and there was no merit and much hidden danger in repeatedly extolling a diplomatic unity of Empire which for years had had no actual existence. Locarno, however shocking it may have been to some people, at least endeavoured to face the facts. Great Britain took sole responsibility for the Locarno Treaty and assumed sole responsibility under it: she did it with reluctance, even perhaps with a touch of fatalism, fully appreciating that by that act she deliberately cut off her policy in Europe from that which she shared with the remainder of the Empire. It was a bold step, but it brought into Empire relations a refreshing touch of realism in place of the Imperial sentimentality of the past.

The Treaty of Locarno, however, marked a still further step in the development of Dominion status. It not only led to a general acceptance by the Empire of the conception of passive responsibility, but also to its approval by all the

<sup>1</sup> *Journal of the Parliaments of the Empire*, Jan. 1926, pp. 9-10; cf. also Section IV, K. 1, pp. 316-19.

signatory Powers. The idea was, of course, not entirely new in the field of international agreements, for the uncompleted treaties of guarantee of 1919 and 1921-2 had been along similar lines, and the same conception was present, by implication, in the Straits Convention annexed to the Treaty of Lausanne. The Treaty of Locarno, however, was much more decisive. France, Germany, Belgium, and Italy, having permitted the insertion of Article 9, thereby openly recognized the peculiar nature of the British Commonwealth and gave the doctrine of 'passive' and 'active' responsibility a formal international endorsement which it had hitherto lacked.

#### V. THE PERIOD OF EQUAL STATUS, 1926-36

The Period of Equal Status was the natural culmination of the development of Dominion self-government. The Imperial Conference of 1917 had given timely expression in Resolution IX to the ambitions of the Dominions; but it had been compelled to deal in generalities and had shelved all details for the consideration of a constitutional conference which was to be convened after the war. Fortunately this meeting was not held; and the ambiguous phrases of Resolution IX were thus allowed to acquire shape and substance through the series of constitutional issues which dotted the succeeding years. Rarely, if ever, has the British dislike of precise definition and their concomitant trust in empirical methods been so completely justified; for the events of this transitional period demonstrated that even an uncommon foresight could not have anticipated in 1919 the nature, direction, and extent of the constitutional development. By 1926, however, the outlines of the new Dominion status had become clearly visible, and the Empire was ready for the constitutional conference which had been proposed nine years before.

The Imperial Conference of 1926 promised in its inception to be merely a repetition of the one three years earlier. The British Prime Minister announced in July that 'it had been agreed that, as in the past, its work should include a general review of foreign policy and defence, and of the questions to which they give rise, and that it should consider the development of the system of communication and consultation between the Governments of the Empire on matters of

common concern'.<sup>1</sup> But even before this statement was made, several of the Dominions had begun to press for more radical action. The Minister of External Affairs of the Irish Free State declared that the Imperial Conference should discuss the status of the Dominions and secure the removal of some of the anomalies that still existed and obscured their sovereignty.<sup>2</sup> In Canada the more extreme supporters of the Liberal Government, who for years past had been urging successive extensions of the national powers, were demanding a more definite statement of the constitutional rights of the Dominion, and the King-Byng dispute in June indicated that the Governor-Generalship at least was urgently in need of revision.<sup>3</sup> But the strongest pressure came from the Prime Minister of South Africa. General Hertzog, who had once been an outspoken advocate of independence, was now insisting that the Union would not be satisfied until the new position of the Dominions was explicitly recognized. Speaking in the House of Assembly on May 28, he urged that the coming Imperial Conference should endeavour to set at rest the uneasiness of South Africa and of other Dominions on the constitutional question:

General Hertzog said that uncertainty about the actual status of the Dominions in relation to foreign countries was leading to repeated friction, and it was necessary to have the position cleared up. His view was that a declaration should be made to foreign nations on the point, a declaration which would necessarily emanate from London. The nations were saying to the Dominions:

'You want us to act in such and such a way, but do not forget we, as a friendly State, cannot treat with you as you want us to do, because we have no official indication of what your position is, and only when we receive such an indication can we treat you as an international independent State.'

Unless, added General Hertzog, our status is acknowledged by foreign nations we simply do not exist as a nation.<sup>4</sup>

South Africa, Canada, and the Irish Free State were thus united in favour of the Conference attempting to define

<sup>1</sup> *London Times*, June 16, 1926. Cf. Section V, A. 1, pp. 325-9.

<sup>2</sup> *Journals of the Parliaments of the Empire*, July 1926, pp. 677-9.

<sup>3</sup> Lord Byng, the Governor-General of Canada, had refused the Prime Minister, Mr. Mackenzie King, a dissolution. An election nevertheless occurred almost immediately, and one of the chief issues was the constitutional question raised by the Governor's action. Mr. King's position was decisively endorsed by the electorate.

<sup>4</sup> *London Times*, May 29, 1926. Cf. also the speech of General Hertzog at the opening of the Imperial Conference, *infra*, Section V, A. 2, pp. 329-30.

more exactly the status of the Dominions. On the other hand, Australia, New Zealand, and Newfoundland, owing in large measure to their greater dependence on Great Britain, were perfectly satisfied to continue a policy of drift and to unravel constitutional difficulties as the need for such action arose. The British Government occupied a middle position: it had a characteristic preference for allowing political evolution to run its course, yet it did not wish the Dominions to feel that the Mother Country was trying to hinder their national aspirations. Under these circumstances it was inevitable that the more aggressive Dominions would succeed in their efforts, and the 1926 Conference therefore took as its main objective the task of bringing the theory of the Empire up to the point where it corresponded with the facts.

When the Report of the 1926 Conference was made public it was variously received. Some hailed it as an epoch-making document, a second Durham Report, a new constitution for the Empire; others said that it was really of little consequence because it contained nothing new and merely stated what every one had known to have been the existing condition for years. Both views had some justification; for although the Report undoubtedly contained little that was new in Empire practice, it was at the same time enormously important in the field of theory and of international relations. It summarized and restated the customs which had recently been established, and gave them unquestioned acceptance and authority; while it also served as a formal announcement to other nations that the British Commonwealth was no longer the Empire of 1914, or even of 1919, but that it had been reorganized and transformed, and that the Commonwealth wished the world clearly to understand the nature of the new organization with which it had now to deal.

The most significant part of the Report was that presented by the Inter-Imperial Relations Committee, composed of the Prime Ministers and other leaders of the Conference with Lord Balfour as Chairman. All questions affecting inter-Imperial relations had been referred to this Committee, and when its recommendations were submitted to the whole Conference, they were accepted unanimously and incorporated verbatim in the general Report.<sup>1</sup>

The most far-reaching and comprehensive paragraph was

<sup>1</sup> *Infra*, Section V, A. 3, pp. 330-46.

that which declared the equality in status of all the self-governing units of the Empire.

Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

. . . Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever. . . . The British Empire is not founded upon negotiations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument.

The remainder of the Report proceeded to consider the various adjustments in the internal and external relations of the Commonwealth which the change in status had made necessary, but which hitherto had been neglected or settled only in part. A recommendation was made, for example, that the title of the King should be altered in accordance with the new position of the Irish Free State and the disappearance of the United Kingdom of Great Britain and Ireland. Another resolution declared that the Governor-General in the Dominions was to be considered in the future as 'the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain. . . . He is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.' The problem of the relation of Dominion to Imperial legislation was too complex, however, for immediate settlement, and it was decided to appoint an expert Commission which would investigate this and allied subjects and submit a report to a later Imperial Conference.

The treaty resolutions of the 1923 Conference were amplified and enlarged, notably in regard to the form which is to be used in the drafting and signing of future agreements.<sup>1</sup> If a treaty is to apply to only one part of the Empire it should state that the King makes it on behalf of that part; if it is to apply to more than one part, it should state that the King makes it in the name of those parts. For this purpose, each part should be separately named and grouped together in

<sup>1</sup> *Infra*, Section V, A. 3 and 4, pp. 337-43, 345-6, 350-1.

this order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League; Canada; Australia; New Zealand; South Africa; Irish Free State; India. This, it will be remembered, was but carrying out the wishes of the Dominion Prime Ministers as expressed at the time of the Peace Conference,<sup>1</sup> and it had the important result of making unnecessary any exempting clause (such as Article 9 in the Locarno Treaty) whereby one or more parts of the Empire are excluded from an agreement entered into by another part. It is therefore now definitely understood that if any self-governing part of the Empire does not participate in the making of a treaty, it will not be bound by its provisions. Moreover, the issue of Full Powers to plenipotentiaries from each unit in the Empire should be made only on the advice of the individual Government, although some units might authorize the plenipotentiary from the part chiefly concerned to act on their behalf.

The question of representation at international conferences, which had caused so much heartburning in the past, was also discussed in detail. Three possible methods were mentioned whereby members of the Commonwealth might be represented at such conferences.

1. By means of common plenipotentiaries, whose Full Powers should be issued on the advice of all parts of the Empire participating. (This would cover such conferences as that at Lausanne; but under this rule Lord Curzon and Sir Horace Rumbold would have had to secure the authorization of each Dominion to act for it. The actual procedure followed at Lausanne could not, therefore, be repeated.)
2. By a single British Empire Delegation composed of separate representatives of such parts of the Empire as are participating in the conference. (This was the form used at Washington in 1921.)
3. By separate delegations representing each part of the Empire participating in the conference. (This form was used at Versailles and Genoa.)

The perennial problem of inter-Imperial consultation and communication also came up for discussion. The Conference stressed the growing need for closer personal contacts between governments—a need which had become more

<sup>1</sup> *Supra*, p. 33; *infra*, Section II, B. 1, pp. 182-3.



urgent than ever now that the Governor-General was no longer to be the agent of the British Government in the Dominions. It was suggested that Great Britain would probably need to be specially represented in the Dominion capitals by her own agents, but that the development of any new system was to be settled in the future by consultation between the British and Dominion Governments concerned.

The Conference also considered the limitation or abolition of appeals from the Dominions to the Judicial Committee of the Privy Council, although no decisive action was taken. This question had been a source of disagreement and friction for many years. In 1875 Canada had endeavoured to give her Supreme Court final appellate jurisdiction, but the British Government insisted on retaining the appeal by special leave of the Judicial Committee, although it acquiesced in the abolition of the appeal as of right or by local leave. In 1900 Australia had been partially successful when the Commonwealth Constitution Act conceded that the High Court should have the final decision in constitutional cases. South Africa in 1909 had been permitted to go even farther, and in practice very few cases from the Union reached the Judicial Committee.<sup>1</sup> Such questions as the limitation of appeals, the personnel on the Judicial Committee, and the creation of a new Imperial Court of Appeal which would unite the judicial work of the Committee and the House of Lords had often been considered at Empire gatherings. A special conference was held in London in 1901 to discuss these matters, and they were also debated at length in the Imperial Conferences of 1907, 1911, and 1918, but nothing emerged from all these deliberations save a few minor changes in the composition of the Judicial Committee.

The forces of decentralization, however, which had made such notable advances in the political sphere since the War, had begun to make their influence felt in this field as well. An increasing number of people were found who resented any appeal whatever to a British court no matter how it might be changed or reconstituted so as to permit of greater Dominion representation.<sup>2</sup> Appeals were expensive and dilatory, and the Committee often revealed an embarrassing

<sup>1</sup> There are no limitations on the right of the Committee to hear appeals from New Zealand or Newfoundland.

<sup>2</sup> *Infra*, Section V, B. 6, pp. 363-73.

ignorance of local conditions; but, above all, the existence of such appeals was a tacit admission that the Commonwealth still retained a few traces of Dominion subordination and inequality.

The strongest protests had come from the Irish Free State, which had been compelled against its wishes to accept a modified appeal as part of the settlement of 1921-2.<sup>1</sup> The Irish argued that the Committee was composed for the most part of British lawyers; and that its judgements, in form at least, were given as advice to His Majesty and were made operative by virtue of an Order in Council issued by the British Government. They had been assured, however, that the practice in regard to appeals would be analogous to that observed with South Africa, and that the Judicial Committee would not allow appeals under ordinary domestic legislation except in very exceptional cases. For a few years the Committee followed this principle of restricting appeals, but it later changed its attitude and admitted them on comparatively minor issues. The Free State thereupon fell back upon the device of passing legislation in such terms that consideration of these cases by the Committee was rendered either inoperative or useless.<sup>2</sup>

The Irish delegates brought their grievance to the Imperial Conference of 1926 and secured a statement to the effect that the British Government did not desire that judicial appeals should be determined contrary to the wishes of the Dominion primarily affected. This was somewhat qualified by the Conference adding that no changes in the existing system which indirectly involved other parts of the Commonwealth should be made except after general consultation and discussion.<sup>3</sup> In the 1930 Conference the question was again raised by the Irish delegates, and again shelved. Finally, the Free State found its own remedy, and in 1933 passed an

<sup>1</sup> Article 66 of the Constitution of the Irish Free State reads:

'The Supreme Court of the Irish Free State shall, with such exceptions (not including cases which involve questions as to the validity of any law) and subject to such regulations as may be prescribed by law, have appellate jurisdiction from all decisions of the High Court. The decision of the Supreme Court shall in all cases be final and conclusive, and shall not be reviewed or capable of being reviewed by any other Court, Tribunal, or Authority whatsoever:

Provided that nothing in this Constitution shall impair the right of any person to petition His Majesty for special leave to appeal from the Supreme Court to His Majesty in Council or the right of His Majesty to grant such leave.'

<sup>2</sup> *British Commonwealth Relations* (Toynbee, A. J., ed.), pp. 85-94.

<sup>3</sup> *Infra*, Section V, A. 3, p. 337.

amendment to the Constitution abolishing all appeals from the Supreme Court to the Judicial Committee.<sup>1</sup> The latter body in a decision given in 1935<sup>2</sup> upheld the validity of this legislation on the ground that although it admittedly violated the Anglo-Irish Agreement of 1921, it was nevertheless *intra vires* by virtue of the powers vested in the Free State by the Statute of Westminster.<sup>3</sup>

The Imperial Conference of 1926, as on previous occasions, also listened to a long review of foreign relations by the Secretary of State for Foreign Affairs, and the members participated in a general discussion on the subject. There was, however, a striking lack of any definite commitments on foreign policy, and resolutions on this topic were far fewer in number and even more general in content than in 1923. The Conference, for example, congratulated the British Government on its success at Locarno, but no Dominion showed any desire to change its mind and adhere to the Treaty under the provisions of Article 9. On the contrary, the ideas of passive and active belligerency were definitely set out and accepted in the Report by the comprehensive statement that 'the governing consideration underlying all discussions of this problem (of foreign policy) must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments'.

The enunciation of the principle of equality of status was the most novel and striking contribution made by the Conference, and this has been naturally stressed by most commentators to the exclusion of almost everything else. The Report, however, had not forgotten to complete the picture by giving brief mention to another vitally important aspect of Imperial relations, although this was largely overshadowed by the more drastic pronouncements on status. It pointed out that side by side with the idea of equality of status went a necessary inequality of function, that although the members of the Commonwealth might deal with the world and with one another as free self-governing communities, yet the

<sup>1</sup> The de Valera Government has insisted that the Irish Free State is not bound by the terms of the Anglo-Irish Agreement, and it took a similar stand on the oath of allegiance. Cf. *infra*, p. 123; Section V, H. 2, pp. 440-6. Canada in 1933 abolished all criminal appeals to the Judicial Committee.

<sup>2</sup> *Infra*, Section V, B. 6 (c), pp. 370-3. The Committee at the same time gave a decision which approved the validity of the Canadian legislation as well.

<sup>3</sup> *Infra*, p. 122.

part which each might play in the life and relations of the Commonwealth might not be at all the same.

The principles of equality and similarity, appropriate to *status* [said the Report], do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world.<sup>1</sup>

The function of each part of the Commonwealth is not, therefore, to be considered as fixed and absolute, but as changing and determinable from time to time as the circumstances may require. Conditions of geography, of size, of importance, of economics, of military or naval necessity, will be decisive in fixing the respective functions to be assumed by each member of the Empire at any particular moment. 'It was frankly recognized', said the Report, 'that in this sphere [of foreign affairs], as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain.'

The Report could not by itself [writes Professor Baker] confer upon the Dominions rights of any kind in International Law. It could only create for such rights a solid basis in the public law and constitutional practice of the British Commonwealth; it could only confer upon the Dominions the effective constitutional power to exercise such rights if the foreign Members of the international Society of States were willing that they should. That the Report has done. It has so codified and confirmed the previously evolving practice of the Commonwealth as to establish a firm constitutional basis for an important body of Dominion rights in international affairs.

What are those rights?

They include the right of a Dominion to open negotiations on any subject, technical or political, with any foreign Power; the right to establish direct diplomatic relations with foreign Powers, by setting up its own diplomatic missions in their capitals, and conversely by receiving diplomatic missions from them; the right to create its own consular services abroad, and to decide whether it will receive foreign consuls on its own territory; the right to be represented in international conferences of every kind by its own separate delegations; the right to be bound by no international obligation, active or passive, to which it has not itself specifically agreed; the right to appoint its

<sup>1</sup> *Infra*, Section V, A. 3, p. 332. Cf. also speech by Lord Balfour on the Report of 1926, *infra*, Section V, A. 5, pp. 352-3.

own plenipotentiaries to negotiate international treaties on its behalf; the right to sign such treaties through its own plenipotentiaries, and to secure their ratification when it so desires. These rights, in so far as they relate to the creation or acceptance of international obligations of any kind, must be exercised subject to the conventional duty of consultation.<sup>1</sup>

In brief, the Report, while it emphasized the moral unity of the Commonwealth, marked a great victory for the advocates of decentralization. It provided on every page for greater co-operation, but such provision was necessary because almost every paragraph on the page was asserting the equality of the Dominions and their assumption of full responsibility for all matters which concerned them. The gains which had been won since 1921 were all restated, re-emphasized, and consolidated in the Report. Empire diplomatic unity, which had already disappeared from practice, was formally and quietly abandoned; Empire diplomatic individualism and co-operation took its place. No more significant commentary could be offered than that of General Hertzog, who had been most dissatisfied before the Conference and was most outspoken in his praise after its adjournment:

No declaration could be devised [said he on his return to Cape-town] by which the country's liberty in a most unlimited manner could be so clearly demonstrated as was done in the document as it stood. No one need bother in future about South Africa breaking away from the Empire. As a result of the work of the Imperial Conference, the old Empire no longer exists. The old Empire was a dominating State under which South Africa and the other Dominions had to, and did, submit for years. All that remained was a free alliance of England and the six Dominions, co-operating as friends and, so to speak, forming their own League of Nations.<sup>2</sup>

Events have shown that the treaty provisions of the Imperial Conference Report have won general international acceptance. In 1927 at the International Conference on Naval Disarmament each part of the Empire was represented by a separate delegation as at Paris. In 1928 when the Government of the United States was issuing invitations to sign the Kellogg Pact for the Renunciation of War, it hesitated to approach the Dominions because the question was

<sup>1</sup> Baker, P. J. N., *The Present Juridical Status of the British Dominions in International Law*, pp. 204-5.

<sup>2</sup> *London Times*, Dec. 15, 1926.

primarily an Imperial one. On a hint from the British Foreign Secretary, however, the Dominions were at once asked to become original parties to the Pact, the invitation to Canada and the Irish Free State being delivered by the American Minister at Ottawa and at Dublin, that to the other Dominions being forwarded through the British Government.<sup>1</sup> The Dominions also sent separate representatives to the international conferences at The Hague in 1929 and 1930, and at London in 1930.<sup>2</sup>

New departures have also been made at other stages of treaty procedure. In 1928 when Great Britain, the Dominions, and India accepted the American invitation to become parties to the Kellogg Pact, Great Britain and certain Dominions made their own individual reservations to the proposal.<sup>3</sup> All parts of the Empire later ratified the Pact simultaneously by the deposit in Washington of seven separate instruments, those of Canada and the Irish Free State being presented by their own Ministers, those of the other Dominions, India, and Great Britain being presented by the British Ambassador. This was the first occasion on which the ratification of an important political treaty was carried out by separate instruments, and each ratification stated expressly that it was given on the advice of the Government of that part of the Empire alone.<sup>4</sup>

Another innovation occurred in 1929 at the time of the signing of the Optional Clause of the Statute of the Permanent Court of International Justice. Great Britain and the Dominions made the reservation that 'disputes with any other member of the League which is a member of the British Commonwealth of Nations' were excluded from the operation of the agreement, but the Irish Free State signed the agreement without any such reservation.<sup>5</sup> A further departure was made in 1930 with the ratification of the London Naval Treaty. This was not ratified by the Irish Free State until December 31, although the remainder of the Empire had ratified more than two months before.<sup>6</sup>

<sup>1</sup> *Infra*, Section V, B. 3 (a), pp. 357-8.

<sup>2</sup> *Infra*, Section V, B. 4, pp. 359-62.

<sup>3</sup> *Infra*, Section V, B. 3 (b), pp. 358-9.

<sup>4</sup> Baker, P. J. N., *Present Juridical Status of the British Dominions in International Law*, p. 208.

<sup>5</sup> Keith, A. B., 'Notes on Imperial Constitutional Law', *Journal of Comparative Legislation*, 1930, part i, p. 95.

<sup>6</sup> League of Nations (Treaty Series), 1931, vol. 112, p. 66 n.

A significant contrast to the procedure followed in the recognition of Soviet Russia<sup>1</sup> occurred in 1931 when Great Britain and the Dominions recognized the provisional Government of the new Spanish Republic. After a preliminary consultation among the different Governments of the Empire, recognition was accorded in six separate Notes delivered on behalf of Great Britain, Canada, Australia, New Zealand, South Africa, and the Irish Free State by the British Ambassador at Madrid.<sup>2</sup>

These precedents and others which have since occurred indicate that the Resolutions of 1926 were not mere empty phrases, but rules of international procedure which other countries have been willing to accept. Dominion rights in international affairs have thus been confirmed by practice. Difficulties have, of course, arisen from time to time. In 1927, for example, Great Britain submitted for the approval of the Canadian Government a treaty with Egypt in which the King was described as 'King of Great Britain and Ireland and of the British Dominions beyond the Seas'. Canada objected on the ground that she was thereby being included as a party to an agreement concerning which she was unwilling to assume any responsibility, and the wording was accordingly altered so that the King was stated to be acting only for 'Great Britain and Northern Ireland'.<sup>3</sup> All these incidents, however, serve to show not only the changes which have followed the Resolutions of 1926 but also the substantial difficulties and complexity of the foreign relations of the new British Commonwealth, and the old problem of developing means of communication and consultation has continued to be no less urgent than before.

The suggestions of the Imperial Conference regarding closer personal contacts between the British and Dominion Governments were also acted upon to a limited degree. Consultation takes place to-day in one of three ways: (a) Directly between Prime Ministers as provided for in 1918.<sup>4</sup> This is used very rarely. (b) Directly between the Imperial and Dominion Governments. This has always been the usual method, but with the disappearance of the Governor-General in most of the Dominions as the agent of the Imperial Government and the consequent substitution of

<sup>1</sup> *Supra*, p. 87; *infra*, Section IV, F, pp. 295-6.

<sup>2</sup> *Infra*, Section V, B. 5, pp. 362-3.

<sup>3</sup> *Can. H. of C. Debates*, Mar. 30, 1928, pp. 1850-4.

*Supra*, p. 28.

correspondence, this has become too impersonal. It is still much used, but it has tended in recent years to be displaced by the third method. (c) Indirectly through personal contact between representatives in each other's capitals. The High Commissioners of the Dominions naturally took over this function in London (Australia experimented with a Resident Minister and a liaison officer<sup>1</sup>), but there was no corresponding person in the Dominions who was able to speak for the British Government. Accordingly Great Britain began in 1928 to send High Commissioners to the Dominions<sup>2</sup> to represent her interests and explain her views. There are now (1936) British High Commissioners at Ottawa, Capetown, and Canberra, but contact with New Zealand is still maintained through the Governor-General. There is no representative of Great Britain in Dublin, nor has any Dominion Government a representative in any Dominion capital.<sup>3</sup>

In 1927 Canada was elected to a non-permanent seat on the Council of the League of Nations<sup>4</sup>—the Council at this time being composed of five permanent members (Great Britain, France, Germany, Japan, Italy) and nine non-permanent members, three of whom retired each year. Since 1927 a Dominion has always held one of the non-permanent seats: the Irish Free State was elected in 1930, Australia in 1933, and New Zealand in 1936.

Three years after the recommendation of the 1926 Conference, the Committee or Conference on Dominion Legislation and Merchant Shipping Legislation was appointed. This Committee<sup>5</sup> was to examine certain questions regarding the operation of Dominion legislation and merchant shipping legislation, and to submit proposals for the consideration of the next Imperial Conference which was to be convened in 1930. The restricted scope of its activity thus clearly distinguished this gathering from the regular Imperial Conference, and the nature of its personnel made this difference even more pronounced. The members were for the most part distinguished civil servants, although each delega-

<sup>1</sup> *Supra*, p. 95.

<sup>2</sup> *Infra*, Section V, B. 2, pp. 354-7.

<sup>3</sup> An excellent account of the existing machinery for communication within the Empire is given in Palmer, G. E. H., *Consultation and Co-operation in the British Commonwealth*, pp. 14-72.

<sup>4</sup> *Infra*, Section V, B. 1, p. 354.

<sup>5</sup> This body, officially called a Conference, is called here and hereafter a Committee in order to distinguish it from the Conferences of 1926 and 1930.



tion, with the exception of Australia, was headed by a political leader. The Committee was therefore not the body of experts which had been planned in 1926, but on the other hand it was far more technical and non-political than the usual Conference. A purely expert body would have encountered great difficulties, for the terms of reference given by the Conference were too vague and too contentious to permit of an expert committee functioning successfully. Some ministerial delegates were consequently almost indispensable: they could represent their respective Governments; they could make necessary concessions and political decisions; and they could accept official responsibility for the Committee's Report.

The general task of the Committee was to make specific recommendations for abolishing the legal inferiority of the Dominions and thus grant them that equality in law which the Conference of 1926 had implied should exist. The terms of reference under which the Committee worked had mentioned four chief questions to be considered, and its Report<sup>1</sup> consequently discussed each of these in turn: disallowance and reservation of Dominion legislation; Dominion extra-territorial legislation; the Colonial Laws Validity Act; merchant shipping legislation and the Colonial Courts of Admiralty Act of 1890.

The Report stated that the disallowance of Dominion Acts had long been abandoned in practice and was obviously inconsistent with the resolutions of the 1926 Conference. The recommendation was therefore made that this condition should be legally recognized (if any Dominion so desired) by that Dominion deleting the disallowance clause from its constitution,<sup>2</sup> or, if it lacked the power of constitutional amendment, the Parliament of Great Britain would, on request, repeal the clause. The reservation of Dominion Bills for the signification of the pleasure of His Majesty, whether such reservation was discretionary or compulsory, was also deemed inconsistent with the existing position of the Dominions and the new status of the Governor-General. 'It is the right of the Government of each Dominion', said

<sup>1</sup> *Infra*, Section V, C, pp. 373-94.

<sup>2</sup> A minor exception was recognized in the practice of allowing the Imperial Government to disallow Dominion Acts which in its opinion affect the position of Dominion stocks which have been admitted to the British list of trustee securities. This was to be allowed to stand if the Dominion so desired. Cf. *Report*, Sections 24, 25; *infra*, Section V, C, p. 376.

the Report, 'to advise the Crown in all matters relating to its own affairs, and consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.' The Committee therefore recommended that all provisions regarding the reservation of Bills might be struck out of the Dominion constitutions whenever the individual Dominion desired their removal.

The question of the extraterritorial operation of Dominion legislation had been extremely troublesome in the past, and had given rise to many judicial differences of opinion, conflicts of jurisdiction, and uncertainty. The general rule had been that a Dominion had no power to pass laws of this nature, but certain exceptions had been recognized by Imperial statute, and the Dominions had been able to evade the rigidity of the rule still further by passing laws which indirectly achieved what directly lay outside their jurisdiction.<sup>1</sup> The Report proposed to take no half-way measures,<sup>2</sup> but to have the Imperial Parliament enact that 'the Parliament of a Dominion has full power to make laws having extraterritorial operation'.

The clauses dealing with the Colonial Laws Validity Act were the most vital part of the Committee's Report. This Act had been passed in 1865 for the purpose of rendering more specific the powers of the colonial legislatures, and it had also had at the time the result of enlarging those powers to an appreciable degree.<sup>3</sup> The chief provisions of the Act were that colonial legislatures could make laws repugnant to the English common law, but if a colonial statute conflicted

<sup>1</sup> Canada has contended that there were no purely territorial limits on the jurisdiction of the Dominion, and this doctrine has been recently accepted by the Judicial Committee in the following statement: 'Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada or as being one of the specific subjects enumerated in s. 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully Sovereign State.' *Cruft v. Dunphy*, [1933] A.C. 163. The Statute of Westminster has made the question one of theoretical interest only.

<sup>2</sup> The 1926 Report had proposed only 'that each Dominion Parliament should have power to give extraterritorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion'.

<sup>3</sup> Sections 45-9 of the Report give a brief history of the Act, *infra*, Section V, C, pp. 381-2.

with the terms of a British Act of Parliament, which extended to the colony either by express words or necessary intendment, then the colonial statute was void to the extent of such repugnancy. In recent years the effect of the Act had been to restrict to some extent the exercise of Dominion powers, although this in practice rarely meant anything more serious than a temporary inconvenience and a nominal dependence on the British Parliament. The Dominions, however, rightly pointed out that the Colonial Laws Validity Act was quite inconsistent with their new stature and that it embodied the old colonial idea of unequal and subordinate parts under the control of the Parliament at Westminster. Being somewhat sensitive on the subject of their newly acquired manhood, they were naturally not at all desirous of perpetuating a monument which would be a constant reminder of their recent immaturity. Pride rather than convenience, consistency rather than necessity, thus decreed that the Dominions must be freed from the operation of the Act.

The Report recommended that the British Parliament should declare that (1) the Colonial Laws Validity Act should no longer apply to any law made by a Dominion Parliament; (2) no Dominion law in the future should be void because it was repugnant to the common or statutory law of Great Britain; (3) no law of the Imperial Parliament should extend to any Dominion except at the request and with the consent of that Dominion, and this request and consent should in such cases be expressly declared in the Act.<sup>1</sup> These three declarations would give to the Dominions full and complete legislative powers; but the Committee foresaw that certain adjustments would have to be made. The relationship of the members of the Commonwealth to one another through the Crown made it desirable that laws regarding the succession to the Throne and the Royal Style and Titles should be passed not by the Imperial Parliament alone but by the Parliaments of all the Dominions as well.<sup>1</sup> Moreover, in order to guard the federal constitutions of Canada and Australia and the amending power in the New Zealand constitution from possible abuse by the Parliaments in each of these Dominions, it was suggested that a clause be added to the enabling statute to the effect that these three constitu-

<sup>1</sup> The Dominions, for example, were constantly consulted regarding the arrangements for the Coronation of King George VI.

tions should be amended only in accordance with the law and constitutional practice which had existed up to this time.

The recommendations of the Report regarding merchant shipping and Admiralty Courts were along similar lines. Hitherto the Merchant Shipping Act of 1894 and the Colonial Courts of Admiralty Act of 1890 had largely covered these two fields in the Dominions; but the Report advised that henceforth the Dominions should legislate on these subjects as they saw fit. Uniformity was, beyond doubt, highly desirable, but it should be achieved not by compulsion but by voluntary agreement and reciprocal legislation throughout the Commonwealth.

The Report concluded with a suggestion that a tribunal should be created to settle disputes between different members of the Commonwealth. This tribunal was to be an *ad hoc* body selected from standing panels, and would have jurisdiction only on justiciable issues arising between the Governments.

The Report of the Committee met with a good deal of criticism, chiefly on the ground that it was unduly legalistic. Such criticism, however, was quite beside the point, although it might have been made with some truth of those recommendations of the 1926 Conference which made the work of the Committee necessary. The Committee in 1929 simply did what it was instructed to do: it carried out in detail the principles laid down by the Conference three years before. The Dominions had asked for legal equality, and the task of the Committee was to draft a measure which would give them as much legal equality as the Imperial Parliament could bestow. The result may or may not have been worth the effort, the new legal position proposed may or may not have been an improvement on the position which had already been reached in practice, but that responsibility belonged to the Conference of 1926 and not to the Committee of 1929.

The following year saw another Imperial Conference. The British Prime Minister announced that the proposed meeting would deal with the recommendations of the 1929 Committee, foreign policy and defence, and economic questions of common interest,<sup>1</sup> but there was a general feeling that the last would prove to be by far the most important. Constitu-

<sup>1</sup> *Brit. H. of C. Debates*, July 30, 1930, pp. 473-4.

tional equality had been already assured and needed only a few final touches for its attainment, foreign affairs seemed moderately quiescent, while the economic depression which was rapidly casting its shadow over the world made the development of inter-Empire trade a very vital issue indeed.

It is the economic problem [wrote *The Times*] which now dominates all others, and it is in the economic field that the public, both in this country and in the Dominions, expects the most definite and the most useful results from the Conference. . . . This Conference, it is hoped, will devote itself more especially to an endeavour to devise methods for closer economic co-operation, for the encouragement of inter-Empire trade, and for the concerted and systematic development of the Empire's resources. Economic depression and consequent unemployment, now widespread throughout the Empire—and indeed throughout the world—give these subjects a particular urgency and importance. They affect the daily life of every citizen of the Empire. By comparison with the problem of how to re-establish our declining prosperity the discussion of academic legal and constitutional questions becomes a mere pedantic futility.<sup>1</sup>

The constitutional questions before the Conference apparently presented few difficulties.<sup>2</sup> The delegates unanimously resolved to accept the recommendations of the 1929 Committee with a few verbal changes, and requested the Imperial Parliament to pass an Act (to be known as the Statute of Westminster) which would place these resolutions in statutory form. Canada, however, caused a slight complication by asking that the Colonial Laws Validity Act should not be repealed so far as she was concerned until the Government of Canada had formally given its consent. The reason for this request was that at least two of the Canadian provinces were afraid that their interests would be jeopardized by the repeal, and they demanded that all the provinces should be consulted before the Dominion agreed to the proposed change. The Imperial Conference naturally acceded to Canada's request, the provinces were subsequently consulted, and clauses inserted accordingly in the Statute of Westminster.<sup>3</sup> The Conference gave further consideration to other subjects mentioned by the Committee, such as nationality and a tribunal for disputes within the Commonwealth, and it also amplified certain decisions of the 1926 meeting. It resolved, for example, that the appointment of

<sup>1</sup> July 31, 1930.

<sup>2</sup> *Infra*, Section V, D, pp. 394-411.

<sup>3</sup> Section 7 of the Statute, *infra*, Section V, E. 1, pp. 411-14.

a Governor-General should be made in future by the King on the advice of the Dominion Government concerned, and that the channel of communication which might be used by the King and the Dominion Government was a matter for their decision alone. It also elaborated the arrangements which had been made regarding communication and consultation in foreign affairs, and discussed briefly the question of defence.

In the political field where there was little to be done the Conference was quite successful; in the economic field where there was much to be done the Conference was almost a complete failure. Many committees on economic questions were appointed and their reports duly submitted and received; many speeches were made and various schemes proposed; enormous dinners were consumed; but the tariff barriers remained as before. British free trade and Dominion protection could not be reconciled. Mr. Bennett, the Prime Minister of Canada, suggested a system of reciprocal preferential tariffs; but this did not meet with the approval of the British Government, who cautiously and tentatively proposed some sort of quota system. Mr. Bennett had stated early in the session that he stood above all for a policy of 'Canada first', and other speakers were no less emphatic in their endorsement of the same principle as applied to their own bailiwicks. With that important reservation, each was willing to make concessions for the sake of Empire. 'All parts of the Commonwealth', said the Report, 'were united in a common desire that all practicable steps should be taken to promote and develop inter-Imperial trade'; but unfortunately the event proved that no steps were practicable. The sole concrete achievement on tariffs was an undertaking by the British Government that 'the existing preferential margins accorded by the United Kingdom to other parts of the Empire will not be reduced for a period of three years', and a similar undertaking was given by South Africa so far as it affected the United Kingdom. After weeks of conference and unparalleled plain speaking the meeting 'adjourned', with the purpose of reassembling at Ottawa within a year to consider further the means of Empire economic co-operation.

Brief mention may here be made of a constitutional practice announced in 1931 by the Irish Free State which decisively settled a controversial point of many years' standing,

namely the acceptance of Dominion responsibility for advice given by that Dominion Government to the King. It had been frequently argued since the War<sup>1</sup> that in such cases the Imperial Government, by acting as the channel of communication between the Dominion and the King, thereupon accepted responsibility for the advice, and the argument was strengthened by the fact that in certain of these instances the Great Seal of the United Kingdom was used. The arrangement concluded by the Irish Free State in 1931<sup>2</sup> provided that the Free State Government should advise the King direct, and that Irish and not British Seals should be used on all documents relating to the Irish Free State. Responsibility was thus squarely placed on the shoulders of the Dominion alone.

The goal of self-government within the Empire was reached with the enactment of the Statute of Westminster<sup>3</sup> in 1931—the statute passed by the British Parliament in accordance with the recommendations of the 1929 Committee and the 1930 Conference. The legal theory of the Commonwealth had at last caught up with events: the constitution de facto had become in its essentials at least the constitution de jure. The Statute was passed partly for the sake of political convenience, but chiefly to satisfy those sensitive Dominions and fussy persons who were not content with constitutional practice as enunciated in 1926 but who demanded legal as well as practical equality. It necessarily failed in its main purpose. The awkward fact remained, and must remain, that if the Imperial Parliament could grant complete legal powers to the Dominions it could at any time withdraw them by the same method; and to argue that the British Parliament would never repeal the Statute of Westminster is simply to admit that Dominion powers depend now, as they depended before, upon constitutional usage. Apparently the only way in which complete powers in the absolute sense could be obtained would be for the Dominions to declare their independence, and then re-enter the Commonwealth as independent States.

The few constitutional issues which have occurred since the passage of the Statute of Westminster have been of secondary importance in the development of Dominion

<sup>1</sup> Cf. *supra*, pp. 34, 71-2; *infra*, Section IV, E. 3, pp. 283-6.

<sup>2</sup> *Infra*, Section V, F. 1, pp. 421-2. South Africa later received her own Seal also, *infra*, Section V, F. 3 and 4, pp. 425-8.

<sup>3</sup> *Infra*, Section V, E. 1, pp. 411-14; cf. also Section V, E. 2, pp. 414-21.

status, which reached its natural culmination in 1931. The Dominions have been generally satisfied with their acknowledged position and have faithfully endeavoured to co-operate with Great Britain and with one another as distinct but sympathetic nations. The Irish Free State has been the conspicuous exception. So long as the Cosgrave Government was in office the position of the Free State was moderate and conciliatory, although marked by a desire to extend its powers through negotiation with the British Government in accordance with the terms of the Anglo-Irish Agreement. Since Mr. de Valera has become President, however, the Irish demands have been extreme and calculated to disrupt the Commonwealth, and few occasions have been lost to embarrass the British Government and weaken the British connexion. Mr. de Valera has modelled his tactics on those used by the Dominions in the past by waging persistent guerrilla warfare against all constitutional restrictions. The disputes of the Free State with Great Britain have differed, however, in several important respects from those in which the other Dominions were earlier involved: they have been conducted with independence as the immediate goal, there has been a bitterness and an intransigence in the relations with Great Britain which have rarely, if ever, appeared on other occasions, and the Free State has not hesitated in the struggle to repudiate its most solemn legal and moral obligations towards Great Britain. The Government of the Free State has thus refused to recognize the Agreement made with Great Britain in 1921 by abolishing the oath of allegiance, the appeal to the Privy Council, and the office of Governor-General,<sup>1</sup> despite the express assurance of President Cosgrave at the time of the passage of the Statute of Westminster that 'we have reiterated time and again that the Treaty is an agreement which can only be altered by consent'.<sup>2</sup> The de Valera Government has further shown its complete disregard for the obligations assumed by its predecessors by repudiating the land-annuities agreement and refusing to transfer the funds collected as annuities to Great Britain. The latter has endeavoured to reimburse herself by imposing special customs duties on Irish goods, and the Free State has replied by imposing a high tariff on imports from Great Britain.

<sup>1</sup> *Infra*, Section V, H. 2, pp. 440-6; Section V, B. 6 (c), pp. 370-3.

<sup>2</sup> *Infra*, Section V, H. 1, pp. 437-40.



Equally bitter has been Mr. de Valera's attack on the representative of the Crown. The powers of the Governor-General under the Constitution were appreciably less than those exercised in the other Dominions, but nothing short of the abolition of the office would satisfy the President. The de Valera Government treated the Governor from the first with scant respect; and when he was driven to protest and to make his protests public the President recommended his dismissal. His successor—appointed on the advice of Mr. de Valera—was an obscure shopkeeper, who did not even venture to live in the Governor's residence and whose chief merit seems to have been a genius for remaining concealed in the shadow of the President. Finally, on the abdication of King Edward in December 1936, the Dáil abolished the Governor-Generalship entirely whilst retaining the connexion with the King in all diplomatic dealings with foreign countries.<sup>1</sup>

Secession has for some years past been an academic political issue in South Africa, but that Dominion is apparently content with the abstract right, and would desire to put it into practice only if the constitutional right were denied. In 1930 when the Union Parliament was considering the Report of the 1929 Committee, General Smuts suggested that the carrying into effect of the recommendations meant the abandonment of secession except with the consent of all the sister states.<sup>2</sup> The Union Parliament thereupon approved the Report with the proviso 'that Section 60 of the Report shall not be taken as derogating from the right of any member of the British Commonwealth of Nations to withdraw therefrom', and General Hertzog announced that when he went to London he would see that 'action is taken which will enable me to say that that door [to secession] is not locked on us'.<sup>3</sup> The Imperial Conference of 1930, however, made no pronouncement on the matter.

Mr. de Valera, on the other hand, has made no secret of the fact that he regards secession as a very real practical issue and awaits only a favourable opportunity to translate it into action. In 1933 the Irish Free State demanded of the British Government 'a direct and unequivocal statement' whether a decision of the Irish people to sever their connexion with the British Commonwealth would be treated as 'a cause of

<sup>1</sup> *Infra*, Section V, I. 2, pp. 454-5.    <sup>2</sup> *Infra*, Section V, G. 2 (a), pp. 429-31.

<sup>3</sup> Cf. *The Round Table*, Mar. 1931, p. 453; also statement made by Mr. Bonar Law in 1920, *infra*, Section V, G. 1, pp. 428-9.

war or other aggressive action'. Great Britain tactfully replied that she could not answer a question which was purely hypothetical, and she consequently could not say what attitude she would adopt until faced with the actual emergency.<sup>1</sup> In December 1936, however, Mr. de Valera failed to utilize the opportunity presented by the abdication of King Edward to withdraw from the Commonwealth—an abstention which in all likelihood indicates a slight change of heart on the part of the Irish President.

The Anglo-Irish dispute over the oath of allegiance and the land annuities has had one very interesting sequel. At the time when the tension had become acute, both the Australian and South African Governments addressed dispatches to the Irish Free State deprecating any break in the friendly co-operation which had lately marked the relations between the two countries, and expressing the hope that the differences might be speedily reconciled.<sup>2</sup> The correspondence seems to have had little result except to annoy Mr. de Valera; but it may form an important precedent for the future. It showed a sense of common responsibility for preserving the cordial relations which existed throughout the Commonwealth, and a feeling that a breach in those relations was the concern not only of the parties immediately involved but of all the members of the group.<sup>3</sup> The same disagreement served to indicate the necessity for utilizing some such arbitral tribunal for inter-Empire disputes as was contemplated in the Reports of 1929 and 1930. A tribunal of this kind was indeed suggested by the British Government for the settlement of the annuities issue, but the Free State would not agree to choose the personnel from within the Empire and insisted that it be made an international body. To this proposal the British Government would not consent.<sup>4</sup>

In 1934 the Union of South Africa passed the Status Act and the Royal Executive Functions and Seals Act.<sup>5</sup> The immediate purpose of these Acts was apparently to reconcile

<sup>1</sup> *Infra*, Section V, H. 4, pp. 449-52.

<sup>2</sup> *Infra*, Section V, H. 3, pp. 446-9.

<sup>3</sup> The incident was not without ancestors. Canada and Australia had ventured on several occasions to approach Great Britain on the Home Rule issue, and Australia, New Zealand, and Cape Colony had protested against the adoption of Chinese labour in the Transvaal in 1905. Hall, H. D., *The British Commonwealth of Nations*, p. 142 n.

<sup>4</sup> For a discussion of such a tribunal within the Empire, cf. Mackay, R. A., 'The Problem of a Commonwealth Tribunal', *Proceedings of the Canadian Political Science Association*, 1932, pp. 68-81.

<sup>5</sup> *Infra*, Section V, F. 2 and 3, pp. 422-7.

certain elements in the Nationalist and South African parties, but their actual effect on Dominion status cannot be so summarily stated. The South African Government contended that the Acts did nothing new and merely regularized, like the Statute of Westminster, the existing position of the Union; but this interpretation is more literal than accurate. The delegation of the powers of the King to the Governor-General, which is contained in the statutes, certainly eliminates many of the obstacles in the way of the Dominion exercising powers of war or neutrality on its own initiative, and it may prove in the future to have been a very radical step indeed.<sup>1</sup>

The economic section of the Imperial Conference which had been adjourned until 1931 was postponed and did not meet until July 1932. In the interval the financial crisis had occurred in Great Britain, and the National Government had come into power with an enormous parliamentary majority pledged to financial rehabilitation and reform. The acuteness of the continued world depression and the more sympathetic attitude of the new British Government made the prospects of the Ottawa Conference far brighter than in 1930, and there was every reason to hope that now, if ever, the nations of the Empire would be willing to co-operate for the common good. Virtually every country in the world had embarked on a policy of reckless economic nationalism; and the hope was frequently expressed that the British Empire by its enlightened selfishness would lead the way back to sanity. The meeting would be, said *The Times*, 'the most momentous Conference in the history of the British nations'.

The results did not measure up to the high expectations that had been entertained, although the Conference was by no means a failure. It was a market, with buyers and sellers each higgling for their own advantage. The spirit of generous concession, of mutual helpfulness, of friendly compromise, was noticeably absent, and the dominating note was one of hard-headed bargaining and a feeling which at times approached actual distrust and hostility. It was a meeting of sister nations who apparently did not hesitate to speak with sisterly force and candour, and to drive most unsisterly agreements with one another. There was, however, an un-

<sup>1</sup> *Infra*, Section V, F. 4, pp. 427-8. Cf. Keith, A. B., 'Notes on Imperial Constitutional Law', *Journal of Comparative Legislation*, 3rd Series, vol. xvi, part iv, Nov. 1934, pp. 289-93.

mistakable demand throughout the Empire for action of some kind, and this in all probability saved the Conference on those occasions when it stood on the brink of dissolution and failure. There finally emerged a series of bilateral trade agreements between Great Britain and India, Southern Rhodesia, and all the Dominions, except the Irish Free State,<sup>1</sup> as well as others between the Dominions and Colonies themselves. These attempted to stimulate trade by the use of such devices as lowering tariffs to one another, raising tariffs against foreigners, adopting quotas, providing against unfair competition, and setting up tariff boards for future guidance and protection. The agreements represented fewer concessions to free trade than had been expected, but the advocates of closer economic co-operation within the Empire could nevertheless claim a partial victory for their cause both in these and in the less spectacular but useful conclusions reached by the Conference and its committees on other economic subjects.

Such has been the development of Dominion status since 1914. The progress has been short in time, but more prolific in constitutional incidents than any other two decades of Empire history. Nor can one escape the conclusion that the changes have been largely inevitable; for the fatalism which was so apparent in the Chanak Incident has been almost as conspicuous throughout the entire development. Many people, particularly those living in Great Britain, felt and still feel that the War might easily have turned the Empire towards federalism; but at no time did this solution find more than a few adherents outside the United Kingdom. National autonomy had been strong in the Dominions before 1914, and while the War obviously quickened Imperial sentiment it none the less awakened and stimulated a Dominion patriotism which in the end swept all before it. From the moment that Resolution IX was passed by the Imperial Conference of 1917 there was little hope of turning back or of bringing the movement to a halt, and any deviation from the objective has seemed, at least in the light of subsequent events, to have been doomed from the start. The

<sup>1</sup> The Irish Free State attended the Conference, though her quarrel with Great Britain made her position there a somewhat curious one. Mr. de Valera has not hesitated to turn his Empire connexion to good advantage when it has suited him to do so.

train of nationalism was on the track, and, barring catastrophe, would inevitably reach its appointed destination.

The Imperialists had their great opportunity in the Imperial Cabinet experiment of 1917-21. It had infinitely more hope of success than any other centralizing scheme which might have been attempted, and it was begun most auspiciously at a time when Empire loyalty and sacrifice were at their height. A common foreign policy, formulated by an Empire Cabinet and carried on by the British Government in consultation with the Dominions, was a pretty thing on paper; it apparently reconciled nationalist ambitions with international and Empire necessities, but it simply would not work. It broke down hopelessly before the pressure of events and the reaction to those events by public opinion in the Dominions.

The issue was not long in doubt. With a precision and an inevitability which rarely occur outside the theatre, the Empire was confronted with a series of minor crises, some deliberately sought, others almost purely the product of chance. Each incident was different from its predecessors; each was apparently calculated to feel out the possibilities of Dominion nationhood; each disclosed in the result some new phase of what Dominion status was to mean in the British Commonwealth. By 1926 the movement had neared, if not reached, its goal. The 'adequate voice in foreign relations' of Resolution IX had become the equal and independent voice in the Report nine years later; the vague and ambiguous phrases of 1917 had been replaced by explicit statements of the rights of fellow members of the Commonwealth; the autonomous nationhood which had been little more than a hope and an aspiration had become in a few years a tangible reality. The British Empire had once again demonstrated the uniqueness of its organization and the political resource of its people.

The steady growth of Dominion autonomy in recent years has been largely brought about by the settlement of definite concrete issues; but in spite of this, one feels that there is still an element of unreality in the final result. The idea of equality with Great Britain has been endlessly reiterated and frequently practised, but its full implications in international affairs have yet to become an essential part of the political consciousness of the Dominions. Neither the overseas

peoples nor their Governments yet feel completely at home in their new surroundings. This is due in large measure to their former isolation and to the rapidity with which they have extended their theoretical powers in foreign relations: the period of preparation and apprenticeship has been insufficient to train them in so complicated a subject, and they are conscious of their inexperience when dealing with other countries. A formal international parade has thus frequently found the Dominions present in full regalia, but on less showy occasions they have retired into the background and have rarely ventured to obtrude upon the deliberations of the other Powers. Their diffidence would doubtless have disappeared long since had they been independent nations and forced to fend for themselves, but their close association with Great Britain, combined with the readiness of the latter to carry the burden of foreign affairs, has made the choice of the Dominions too easy. They have usually taken the path of least resistance and have allowed the British Government indirectly to assume a large part of their foreign relations. Inequality of function within the Empire has thus tended to rob equality of status of some of its significance.

Instances of this lack of initiative in international relations may be found in every Dominion. Not a single Government, for example, has seen fit to create a separate department with a separate Minister of External Affairs at its head. The Department has invariably been placed under an already busy Minister (usually the Prime Minister himself), who has far too little time to devote to it. The British Government does its best to keep the Dominions apprised of what is going on in diplomatic circles, but the vast flood of dispatches and memoranda is apt to receive only the cursory attention of the responsible Minister in each Dominion. Debates on foreign policy rarely, if ever, occur in the Parliaments; for there is usually nothing to discuss, little interest in the subject, and still less general information at the disposal of the members of the legislatures or of the public.<sup>1</sup> Even the Dominion participation in the work of the League of Nations, which all the Dominions profess to take seriously, shows the same casualness. The leading Cabinet Ministers rarely attend its sittings, and there has been a tendency to alter

<sup>1</sup> A discussion of this point is given in *British Commonwealth Relations* (Toynbee, A. J., ed.), pp. 185-6. Cf. recent protests in the Canadian Parliament, *Can. H. of C. Debates*, June 18, 23, 1936, pp. 3873-9, 4123-6.

from year to year the delegates who have been sent—a practice which inevitably produces a break in continuity and insufficient knowledge and experience.

Nor have the Dominions made any conspicuous effort to formulate foreign policies of their own, although Australia's consistent attitude to Japan and to immigration and Canada's resolute fostering of cordial relations with the United States have been steps in that direction. A certain amount of opportunism and empiricism must, no doubt, appear in any foreign policy, but it is both pusillanimous and unwise to allow everything to wait upon the circumstances of the moment. Yet this is precisely what the Dominions have been doing, and there is every likelihood that future emergencies will catch them quite unprepared and faced with the unpleasant necessity of making sudden decisions without having given adequate thought to the course to be pursued. The recent Ethiopian and Spanish crises have had at least the great merit of arousing public feeling in the Dominions as to the precariousness of the existing position, but they have also shown that the Dominions are still largely dependent on British diplomacy and in this regard have made but little progress since 1914.<sup>1</sup> In the event of war the Dominions might, it is true, save their pride by making the gesture of independent declarations, but in reality the result would be the same as before—they would be at war as a result of a foreign policy which was neither Australian, nor South African, nor Canadian, but British.

All this does not mean that the Dominions must or should develop foreign policies antagonistic to those of Great Britain or of one another. That, indeed, would be most unnatural; for the policies of most if not all of the Dominions would be based on the close association of the nations of the British Commonwealth. It does mean, however, that far too little attention has been given to the whole question of international relations and that the time is now past when the Dominions can rest content with a policy of drift. Efforts should be made to arrive at a common understanding with the other parts of the Commonwealth on certain questions of general interest, such, for example, as the relations with the United States and with the League of Nations. At the same

<sup>1</sup> Cf. speeches of Dominion representatives at the League Assembly in 1936, *infra*, Section V, G. 4, pp. 436-7.

time, each Dominion should begin to formulate its own foreign policy which, because of geography, racial conditions, or some other reason, is peculiar to itself and will therefore be apt to differ from those of its sister nations. Issues such as those raised by the British signature to the Treaty of Locarno would fall in this category. Until this is done, and seriously done, Dominion rights in foreign affairs are likely to prove empty shells which serve but to conceal ominous realities which a serious international crisis may suddenly and unexpectedly disclose.

It is very obvious that the constitutional difficulties within the Empire have not ceased with the Report of 1926 or the Statute of Westminster. To study the future of the Empire is, however, not within the province of this brief essay, which has endeavoured to outline a development rather than assume the mantle of prophet. It therefore does not attempt to discuss such problems as the future methods of co-operation and consultation, Dominion neutrality in British wars, secession, and the effect of the League of Nations upon Empire relationships and obligations. Problems of this kind are quite different from those encountered in the past and may prove to be much more intractable. For three hundred years the demands for greater and greater powers of self-government have dotted the history of Great Britain and her dependencies, and the relationship between superior and inferior has necessarily coloured every phase of that development. That relationship has ceased. Dominion and mother country now stand as equals, and their contacts must take place to-day in the most trying field of human intercourse, that of international co-operation. If the British Commonwealth fails in this field, then the future outlook for it, and probably for the civilized world, is indeed dark; if it can achieve even a partial success, it will not only advance its own cause but that of international society as well.

The history of the Dominions has not, perhaps, been such as to fit them for the task ahead; for the issues of the future will demand qualities which the Dominions have rarely been called upon to exercise—tact, breadth of vision, generosity, willingness to compromise and to co-operate, goodwill, and tolerance. Hitherto the Dominions have always pressed their demands, and Great Britain has made the concessions. That was inevitable from their respective positions within the



Empire. But the position has greatly changed; for the Dominions cannot now ask favours, they are no longer dealing with a superior, and they cannot continue to ask for everything and concede nothing. The role of martyr which they frequently assumed in the past has become outmoded; claims cannot be pushed with the same relentlessness as before; and demands which formerly might have been construed as the legitimate aspirations of a subordinate but ambitious Dominion may now be regarded as the greedy acquisitiveness of a nation which invariably places itself first. In short, there is good reason to fear that a Dominion nationalism, bred upon successful aggressiveness, may fail to realize that the new status involves not only new responsibilities but also an entirely new attitude and feeling towards the other Dominions and particularly towards Great Britain.

PART II

FORMAL AND INFORMAL  
DOCUMENTS



## SECTION I

### THE PERIOD BEFORE THE WAR, 1900-14

#### A. DOMINION ATTITUDES TOWARDS IMPERIAL AFFAIRS

##### I. CANADA

##### (a) *Canada and British Wars*

(*Canadian House of Commons Debates*, February 5, March 13, 1900, pp. 64-72, 1846.)

SIR WILFRID LAURIER (Prime Minister): He [Sir Charles Tupper] repeated this afternoon the words I spoke in England two years ago, when I said that Canada was a nation perfectly independent, that the lien of the Empire over us did not weigh the weight of one feather, but that we were just as independent to-day, under the suzerainty of England, as we could be if absolutely independent. And I said likewise that if England at any time were engaged in struggle for life and death, the moment the bugle was sounded or the fire was lit on the hills, the colonies would rush to the aid of the mother country. When I said this, I did not speak only my own mind or the mind of my hon. friend, but the mind of every Canadian. There are no two opinions upon that point. But while every Canadian admits that he would be ready to contribute our treasure and our blood, and the resources of Canada at the disposal of this country, for the rescue of England, were she engaged in a life and death struggle, there are many Canadians who are not ready to take part in the secondary wars of England or to contribute to the defence of the Empire in any part of it. . . .

I am free to say that whilst I cannot admit that Canada should take part in all the wars of Great Britain, neither am I prepared to say that she should not take part in any war at all. I am prepared to look upon each case upon its merits as it arises; and when I considered the object for which Great Britain was fighting, when I remembered that the primary cause of the war was the refusal by the government of the Transvaal to the Uitlanders of those privileges of equal rights which we enjoy in this country, when I saw the enthusiasm manifested by the people in all parts of Canada, then and there I made up my mind, we decided to send a contingent, and it was sent immediately. . . .

If the result of our action were to be, that in any war of Great Britain, we were to be constrained to take a part, as upon this precedent, I would strongly object. What we have done we have done, as I said at Sherbrooke, in the plenitude, in the majesty of our colonial, legislative independence. I claim for Canada this, that, in future, Canada shall be at liberty to act or not act, to interfere or not interfere, to do just as she pleases, and that she shall reserve to herself the

right to judge whether or not there is cause for her to act. In the words of Rudyard Kipling I repeat:

Daughter am I in my mother's house,  
But mistress in my own;  
The gates are mine to open,  
The gates are mine to close.

That is the position we have taken upon this question. We are independent, as I said in London, absolutely independent, and though we are ready, and though we hope that condition shall never arise, if that condition shall arise we shall act in regard to it just as we have done upon this occasion, consider, reflect, think, weigh, and if we think that there is cause for interference we shall interfere. . . .

(*March 13*) We were not forced [into the South African War] by England, we were not forced by Mr. Chamberlain or by Downing Street, and I cannot conceive what my hon. friend [Mr. Henri Bourassa] meant when he said that the future of this country was not to be pledged by this government. When and where did we pledge the future of this country? We acted in the full independence of our sovereign power. What we did, we did of our own free will, but I am not to answer for the consequences or for what will take place in the future. My hon. friend says that the consequence is that we will be called on to take part in other wars. I have only this to answer to my hon. friend, that if it should be the will of the people of Canada, at any future period to take part in any war of England, the people of Canada will have to have their way. Let me repeat to my hon. friend the maxim which he quoted this afternoon as embodying his views of freedom and which he took from the dispatch of Lord Grey to Lord Elgin: 'It must be remembered that the government of the British Colonies in North America cannot be carried on in opposition to the will of the people.' That was the doctrine in 1847, it holds good in 1900, and will be the language of freedom used so long as we have free parliamentary institutions in Canada.

But I have no hesitation in saying to my hon. friend that if as a consequence of our action to-day, the doctrine were to be admitted that Canada should take part in all the wars of Great Britain and contribute to the military expenditure of the Empire, I agree with him that we should revise the conditions of things existing between us and Great Britain. If we were to be compelled to take part in all the wars of Great Britain, I have no hesitation in saying that I agree with my hon. friend that, sharing the burden, we should also share the responsibility. Under that condition of things, which does not exist, we should have the right to say to Great Britain: If you want us to help you, call us to your councils; if you want us to take part in wars let us share not only the burdens but the responsibilities and duties as well. But there is no occasion to examine this contingency this day.

*(b) The French-Canadian in the British Empire*

(Henri Bourassa in *The Monthly Review*, October 1902)

... What are the feelings of the French-Canadian with regard to Imperial Federation or any form of British Imperialism?

First, as may be naturally expected, sentimental arguments in favour of British Imperialism cannot have any hold upon him. To his reason only must appeals on this ground be made. That the new Imperial policy will bring him, and Canada at large, advantages that will not be paid by any infringement on his long-struggled-for liberty, he must be clearly shown.

Towards Great Britain he knows that he has a duty of allegiance to perform. But he understands that duty to be what it has been so far, and nothing more. He has easily and generously forgotten the persecutions of the earlier and larger part of his national life under the British Crown. He is willing to acknowledge the good treatment which he has received later on, though he cannot forget that his own tenacity and the neighbourhood of the United States have had much to do with the improvement of his situation.

In short, his affection for Great Britain is one of reason, mixed with a certain amount of esteem and suspicion, the proportions of which vary according to time and circumstances, and also with his education, his temperament, and his social surroundings.

Towards the Empire he has no feelings whatever; and naturally so. The blood connexion and the pride in Imperial power and glory having no claims upon him, what sentiment can he be expected to entertain for New Zealand or Australia, South Africa or India, for countries and populations entirely foreign to him, with which he has no relations, intellectual or political, and much less commercial intercourse than he has with the United States, France, Germany, or Belgium?

By the motherland he feels that he has done his full duty; by the Empire he does not feel that he has any duty to perform. He makes full allowance for the blood feelings of his English-speaking partner; but having himself, in the past, sacrificed much of his racial tendencies for the sake of Canadian unity, he thinks that the Anglo-Canadian should be prepared to study the problems of Imperialism from a purely Canadian standpoint. Moreover, this absence of racial feelings from his heart allows him to judge more impartially the question of the relations between Canada and the Empire.

He fully realizes the benefits that Canada derives from her connexion with a wealthy and mighty nation. He is satisfied with having the use of the British market. But this advantage he knows that Canada enjoys on the very same terms as any other country in the world, even the most inimical to Britain. From a mixed sense of justice and egotism he is less clamorous than the British Canadian

in demanding any favour, commercial or other, from the motherland, because he has a notion that any favour received would have to be compensated by at least an equal favour given. . . .

He is told that Canada has the free use of British diplomacy, and that such an advantage calls for sacrifices on her part when Britain is in distress. But considered in the light of past events, British diplomacy has, on the contrary, cost a good deal to Canada. So far the foreign relations of Canada, through British mediation, have been almost exclusively confined to America. That the influence and prestige of Great Britain were of great benefit to Canada in her relations with the United States is hardly conspicuous in the various Anglo-American treaties and conventions in which Canadian interests are concerned.

Not only did the American Republic secure the settlement of nearly all her claims according to her pretensions, but Canadian rights have been sacrificed by British plenipotentiaries in compensation for misdeeds or blunders of the British Government. . . . That he entertains any rancour against Britain on that account would, however, be a false conclusion. For the international intricacies in which Great Britain has been and is still entangled he makes full allowance. With his strong sense of self-government he does not expect the motherland to endanger her own position on behalf of Canada. But if Great Britain is either unable or unwilling to take risks for the sake of Canadian interests, he does not see why Canada should assume new obligations toward Great Britain and run risks on her behalf.

As far as war and defence are concerned he is still less disposed to consent to any Imperial combination. First there is that aversion to militarism that I have mentioned. Then he has a notion that all the sacrifices he may make on this ground will be so much that Canada will give without any probable return.

When he turns towards the past, what does he find? He finds that for the hundred and forty years that he has been a British subject, no more than his English-speaking fellow citizen has he ever been the cause, near or distant, of any trouble to Great Britain. Never did Canada involve the Empire in any war or threat of war. But the policy, right or wrong, of the British Government did cause his country to be the battlefield of two Anglo-American struggles. Upon those two occasions Canada was saved to the British Crown, thanks to the loyalty of his own race. During the Secession war, the peace of Canada came very near being disturbed once more, and her territory was threatened with invasion because of the attitude of Great Britain. And if he has been spared this and other bloody contests, it was only by the granting to the United States of such concessions as are referred to above.

So much for the past. When he considers the present and the

future, the French-Canadian does not see any reason why he should enter into a scheme of Imperial defence.

The argument that if Canada stands by the Empire, the Empire will stand by Canada, cannot have much weight with him; and his objections on that ground are founded both on past events and on prospective developments. In the South African War he has witnessed an application of the new doctrine. Of the expenditure of that war he has been called upon to pay his share—a small one if compared with that of the British Kingdom, but a large one when it is remembered that he had no interest whatever in the contest, and no control over the policy which preceded the conflict, or over its settlement. Should the principle of military Imperialism predominate, he foresees that he may find himself involved in wars occasioned by friction between Australia and Japan, between New Zealand and Germany, between Great Britain and France in Europe, or between Great Britain and Russia in Asia. He does not see any eventuality in which the Empire may be called upon to help Canada.

He is ready now, as he was in the past, to support a sufficient military force to maintain internal peace and to resist aggression on the territory of Canada. But these eventualities are most unlikely to occur in the near future. The enormous area as well as the vast resources of the country offer such opportunities to the care and activity of its population, that social struggles are almost impossible in Canada for many years to come. Foreign invasion, from the United States excepted, is most improbable. The Canadian territory is easy to defend against attacks on her sea borders, which would offer great difficulties and little benefit to any enemy of the Empire. Moreover, from a purely Canadian standpoint, such occurrences are most unlikely to happen. Left to herself Canada has no possible cause of conflict with any other nation but the United States. On the other hand, by entering into a compact for Imperial defence, she may be involved in war with several of the strongest Powers. Therefore, as far as concerns any country outside America, the French-Canadian feels that the scheme of Imperial defence brings upon him new causes of conflict not to be compensated by any probable defensive requirement. . . .

There remains to be dealt with the eventuality of a war with the United States. Rightly or wrongly, the French-Canadian is inclined to think that, in order to avert such a calamity, Great Britain would even go to the length of abandoning all British rights in America. And should British sentiment and British policy undergo such a change as would warrant Canada in counting upon the armed help of the Empire against the United States, the French-Canadian entertains some doubt as to the possibility of keeping up the struggle and carrying it to a successful issue. . . .

From all those considerations the French-Canadian concludes that.



Canada has never been, and never will be, the cause of any display of Imperial strength, with the single exception of a possible encounter with a nation that he is not desirous of attacking, and against which, in his mind, the Empire would be either unwilling or incapable of defending him. He does not therefore feel bound to assume military obligations towards any other part of the Empire.

The stronger Canada grows in population and wealth, the slighter will be the dangers that may threaten her security, and the greater her contribution to the welfare and glory of the Empire. The French-Canadian thinks therefore that the best way in which he can play his part in the building up of the Empire is not by diverting the healthiest and strongest portion of its population from the pursuits of a peaceful and industrious life and sending them to fight in all parts of the world. He does not believe in fostering in Canada the spirit of militarism. He is only anxious to make his country attractive and prosperous by keeping aloof from all military adventures.

Indifferent as he is to commercial Imperialism, hostile as he is to military Imperialism, the French-Canadian cannot be expected to wish for any organic change in the constitution of Canada and to look favourably upon any scheme of Imperial Federation.

### (c) *Canadian Naval Policy*

(*infra*, sub-section B, 3 (b), pp. 161-8)

## 2. AUSTRALIA

### *The Australian View*

(*The Round Table* (Macmillan, London), June 1914, pp. 394-403)

Public opinion in Australia has always been confused on the naval question. The more conservative schools of thought, anxious to be in consonance with the best expert opinion in England, have for years rejected the idea of a local navy, and have only recently accepted it. The local navy policy has been very largely the product of a robust nationalism rather crudely expressed in several powerful organs. From them it has been accepted by the mass of public opinion instinctively as the only policy acceptable to a people which aspires to the rank of nation. In no case have the grounds upon which it is based been carefully thought out and expressed in such a way as to appeal to those interested in Imperial questions in other parts of the Empire. Meanwhile English opinion has been impressed by the sacrifices which Australia is prepared to make, and has heaped compliments and encouragements upon her. These are flattering, but under the circumstances, if not positively dangerous, they are of very little assistance. The Australian who is anxious to see his country put in the way of safety is not satisfied to feel that the fleet is like a mechanical toy placed in the hands of a boy with a view to stimulating

mechanical propensities. Thus the first results of the knowledge that we possess a fleet are the consciousness that the mass of confused and uncoordinated opinion upon matters of defence within the Empire is dangerous, and the desire for the definite formulation of a scheme in which the relations of various parts of the Empire to the responsibilities of defence are clearly set out.

This need is rendered the more notable when we consider the history of the attempts which have lately been made to formulate a common policy. The Australian fleet in its present form was first definitely agreed to at the Defence Conference of 1909, in which Canada and Australia and England took part. It formed part of a scheme in which both Canada and England assumed obligations or indicated their intention of adopting certain lines of policy. None of the obligations undertaken by Canada or England have been carried out. Australia has done her part, but the policy of the other members of the Conference has changed, and their parts in the scheme have been abandoned. . . .

Opinion is very much divided as to the nature of the dangers to which Australia is exposed. Some of these arise peculiarly out of Australian social policy. Yet the Pacific interests of the Empire can only be defended by a joint scheme of defence. The Australian policy must have some relation to some such joint scheme. It must also have some bearing upon future Imperial relations. Fears are widely though quietly expressed that it may lead to separation. Others feel that it will promote a united Imperial policy. The Australian policy has suffered a great deal from the lack of detailed presentment, and an effort must be made to examine it.

The main factors which enter into the question of the security of British interests in the Pacific are fairly simple. We have on the one hand the unquestionable preponderance of Japanese power. The first question is, how far is that power limited by countervailing factors and tendencies. The overwhelming preponderance of Japan in the Pacific is not questioned, and need not be closely examined. It is Japan first and every one else nowhere. Japan is in a position, so far as her naval and military offices are concerned, to work her will. Her fleet is a growing one. Ministerial programmes contemplate increases, and though public feeling protests against the taxation, it has not shown any disinclination to maintain the present policy. . . .

It is next to be considered whether the Anglo-Japanese treaty is a sufficient guarantee of British interests in the Pacific. It must be remembered that a treaty is merely a contractual obligation. It is secured by no independent guarantee, but only by the mutual self-interest of the contracting parties. Are the respective interests of Great Britain and Japan in the maintenance of the treaty of sufficient strength to secure its observance?

The interest of England in the observance of the treaty is obvious. The treaty enables Great Britain to do without a fleet in the Pacific. Great Britain has enormous interests in the Pacific which can under these circumstances only be protected by Japan. Japan indeed is the only nation that can protect them, and, therefore, it is essential to Great Britain to secure her alliance. But what *quid pro quo* does Great Britain give for this service? Great Britain has no fleet in the Pacific, and, therefore, can do no service to Japan there. Japan has no interests in the Atlantic, and therefore Great Britain cannot render any services to Japan there. Under these circumstances the treaty cannot be regarded as a safeguard. It is dangerous in that it leads to a diminution of English power in the Pacific. If questions arose between the Empire and Japan in the Pacific, the Empire would be helpless. In order to retain the virtue of the treaty so far as was possible, Great Britain might have to sacrifice her interests on the question raised. Such a sacrifice would probably be at the expense of the outer Dominions.

Are the interests of any part of the Empire likely to come into conflict with those of Japan in such a way as to make war a possibility? It should be pointed out at once that the character of the respective interests of the Dominions concerned in the Pacific varies considerably both in kind and intensity. It is important to emphasize this because at present it is a strong but unacknowledged factor in the discussion of all Pacific questions. A nation which is only concerned in protecting commercial interests is in quite a different position from a nation which believes that the lives, the happiness and the personal well-being of its subjects may be in question—particularly if the danger be held to arise from a race whose civilization is alien, and whose victory would mean deprivation of privileges and traditions which have grown into the life of a people. It cannot be denied that this difference of interests affects the attitude of Great Britain and the Dominions toward Pacific questions. The interests of Great Britain are primarily commercial, the interests of the Dominions are personal. Great Britain has protected her Empire by a world-wide naval supremacy. This supremacy is becoming increasingly difficult to maintain; if it is not kept up to the full, and so long as the British Government has the sole disposal of the forces of the Empire, it is likely to concentrate where English interests are personal and not where they are merely commercial. An alliance may be a very good protection for merely commercial interests. It is quite another thing to rely on a treaty where personal interests are involved. It is true that a more intense feeling of national sympathy between all parts of the Empire would give the British peoples that personal interest in extra-European problems which is necessary, but that sympathy needs development and a full understanding of those problems which does not at present exist.

The settled policy of Australia is to exclude Asiatic races. It cannot be denied that by so doing she not only delays the development of her territory and weakens her resources for defence, but also offends Japanese sensibilities and puts Japan into the category of hostile nations. It is not likely that a victorious and dominant nation like Japan will brook this action if she feels able to resent it. . . .

The two dominant interests to be considered are the need for greater area in the case of Japan, and in that of Australia for freedom to develop a pure Western civilization unhampered by race difficulties. Some scope for expansion must be given to Japan or her millions must burst out and overwhelm the most available country. In fact, the gravest danger of Australia is that other countries may by pressure of various kinds deprive Japan of her legitimate sphere of expansion and divert it to Australia. . . .

The political institutions developed under Western civilization can only be worked satisfactorily or at all in a homogeneous population in which the members have confidence and trust in one another. They cannot coexist with race discrimination. And if the necessity of race separation began to appear, conflicts would begin at once. The people would have to choose between sacrificing the democratic form of their institutions and substituting a régime of force over the alien people or permitting the democratic institutions to be open to an alien race which did not understand them and would only use them to establish its dominance. . . .

From this point of view so-called peaceful penetration is more to be feared than real war. Its effect would be more far-reaching. A definite adoption of the policy of total exclusion might mean war. In such a war Australia might have some chance of success. Her organization, her mechanical and political capabilities, the genius of the Anglo-Saxon, the sympathy of other sections of the race and of European civilization, would all be on her side, and might enable her to win in the struggle. If there were an internal race conflict, none of these influences would come to bear. Australia is, therefore, much better advised to put her fortunes to the test and to take her stand upon a policy of total exclusion. It is not a matter upon which compromise is possible. . . . With an Eastern race the conflict of ideals and of civilization is fundamental, and the Imperial aspirations of Japan in the Pacific make it inevitable that any concession would be used as a stepping-stone to further advances.

What policy should be adopted towards meeting the dangers which seem to threaten the Pacific communities? Up to the last few years the policy of what is known as the Blue Water School of naval strategists has been dominant. This school held the view that the true policy was concentration of the naval forces of Great Britain where the danger was likely to arise. In case of difficulty the command of the sea should be obtained at the earliest possible moment

by attacking and defeating the enemy at its strongest point, and then all else would be easy. . . . According to this theory the fleets of the Empire should be concentrated (as they have been) in European waters to meet a possible attack by Germany. The wisdom of this policy is not questioned. Germany is a potential enemy of the whole Empire.

It is questionable, however, whether the policy is applicable at all to the present circumstances where a potential enemy of great power exists in the East; and is not controllable by European forces. An attack by Japan might not involve any European complication at all. It could not justify England's attacking Germany and securing the command of the sea. She could not send her fleet away without forfeiting her potential command of the sea to Germany, an invitation which might easily be accepted. She could not get any guarantee from Germany without giving substantial compensation. If such a state of affairs could arise, the theory of the Blue Water School is not applicable at all. That theory only applies to a simple situation, and not to the 'two ocean' dilemma which now confronts the Empire. That the security of the Outer Empire depends upon the United Kingdom's being able to detach a portion of its fleet and send it to the outer seas in case of danger is admitted in the Memorandum presented by Mr. Churchill to the Canadian Parliament. . . .

Another factor is the question of control. Assuming that a fleet could be detached from the Atlantic, would it come at any time when it was called for by a Dominion? If a Dominion were attacked, no matter on what provocation by her, the British fleet would no doubt be available to get her out of the scrape, but the action of armaments is not merely *ex post facto*. They are used in peace to give support to policy. A fleet in the Atlantic is of little weight in assisting the settlement of grave issues in the Pacific. This is especially the case where the interests of the Pacific Dominions are not directly shared by the British people. Such a divergence of interests between Great Britain and the Dominions should not be slurred over in the supposed interests of unity. It must be faced. It is useless to believe that statesmen or populace in England understand the point of view or realize the dangers of the Dominions. Under democratic conditions the only defence is self-defence. The dangers which face Australia are unique. They affect no nation in the world to anything like the same degree as they do Australia. It is not conceivable that British Ministers, as things stand to-day, could secure greatly increased sacrifices from the British electorate.

These facts show conclusively that some effort has to be made in the Pacific Ocean to-day by the people who border on that ocean to defend themselves, and that those peoples should determine the policy upon which their defence is to be conducted. Isolated effort is ineffective. An effort must be made to lay down some principle to which all the Dominions may subscribe; and if the foregoing argu-

ments are sound, it is evident that the first principles of any contribution should be:

1. That there should be ships on the Pacific Ocean large enough to cope with any hostile fleet.
2. That those ships should constitute one fleet and be worked on a common plan.
3. That those fleets should be based upon the British Dominions in the Pacific so far as construction, repairs, naval bases, &c., are concerned.
4. That those ships should be contributed and manned by the various members of the Empire who are interested in the control of the Pacific, so far as possible from their own citizens.
5. That those fleets should be controlled by an authority which, while not divorced in any way from the British naval authorities, would be in direct touch with the Governments of the Dominions, and carrying out a policy agreed to by all.

(N.B. The above article is taken from a paper prepared by Australian students of The Round Table. The writer in *The Round Table* adds:

'There is no question that in its insistence on the "White Australia" ideal and on the strength of nationalism as the leading motives of Australian political thought this able and interesting memorandum faithfully reflects the dominant ideas of the people of the Commonwealth. It was circulated for criticism to a certain number of persons in different parts of Australia who devote some portion of their time to political questions without taking an active part in politics. The comments returned, some by individuals, and some by groups who considered the paper together, are unanimous upon its value as a statement of the prevailing Australian view.')

### 3. SOUTH AFRICA

#### *The Ministerial Crisis in South Africa*

(*The Round Table* (Macmillan, London), March 1913, pp. 369-72)

(The general attitude of South Africa on Imperial relations was the cause of a ministerial crisis in South Africa in December 1912. General Hertzog, Minister of Justice, had made statements on the conflicting interests of South Africa and the Empire to which the Prime Minister, General Botha, took exception. The former refused to resign on the ground that all the Cabinet, including the Prime Minister, really agreed with what he had said. General Botha thereupon resigned in order to obtain a new Government without General Hertzog.)

The issue on which the final quarrel took place (between General Hertzog and General Botha) arose out of a speech made by General Hertzog at De Wildt, a railway siding in the Rustenburg district of the Transvaal. In the course of this speech he defined his attitude on the Imperial issue. . . .

South Africa should be governed by pure Afrikanders. . . . They in

South Africa had come to realize that they had attained their manhood and were resolved to manage their own affairs. . . . Had they chosen to hearken to certain utterances, they would by now have presented twenty or thirty Dreadnoughts to Great Britain. . . . When the proper time came, South Africa would look after its own interests first and those of the Empire afterwards. All that clamouring for great fleet contributions emanated from a few thousand or hundred thousand people who had axes to grind. . . . The main object was to keep the Dutch and English people separated. . . .

The latest little storm had been caused by his assertion, uttered at Nylstroom, that the time had come for the true South African spirit to be at the helm of affairs. He still maintained what he had said on that occasion. The Leader of the Opposition (Sir Thomas Smartt) had said, that is if he understood him correctly, that this was where he differed from him. He (Sir Thomas) said he was an Imperialist first and a South African afterwards. That proved that he (General Hertzog) was right in saying that Sir Thomas Smartt was not yet a true South African. He (General Hertzog) believed in Imperialism only in so far as it benefited South Africa. Wherever it was at variance with the interests of South Africa he was strongly opposed to it. He was ready to stake his future as a politician on this doctrine. Whatever was the issue, he always in the first place asked whether it was to benefit South Africa or not; and if it would be detrimental to the interests of the country and its people, it was the duty of everybody to have nothing to do with it. . . .

It is clear from General Hertzog's account of what happened that he was unable to see that there was any difference, on a question of principle, between himself and his late colleagues. The statement issued by the Prime Minister makes this point clear:

General Hertzog has gratuitously and unnecessarily put the question whether the interests of South Africa should take preference over those of the British Empire. This question should not have been put. There is no reason for putting it, nor should any reason therefore arise in the future.

The true interests of South Africa are not, and need not be, in conflict with those of the Empire from which we derive our free constitutions. The only effect of speeches such as that made at De Wildt will be to cause doubt as to the real policy of the Government, to create misunderstanding and estrangement between the different sections of South Africa's people, and to undo the great work which has been built up in the last four or five years with so much labour and devotion.

I wish to emphasize that to me the interest of South Africa is supreme, and I believe that this view is almost generally shared by the population of our Union. This, however, does not exclude that I myself and the South African party fully appreciate the Imperial ideal.

Under our free constitution within the Empire, the South African nation can fully develop its local patriotism and national instincts. In these circumstances, it was unpardonable to suggest, as happened at De Wildt, that the Empire is only good so long as it is useful to South Africa.

Moreover, the pointed condemnation by General Hertzog in his speech at De Wildt of the policy of racial conciliation, which the Government defends, has been understood to mean that General Hertzog's policy was

different from that of the Prime Minister, and that therefore the Government spoke with two voices. In these circumstances it was impossible for me to continue at the head of the Government, and, as General Hertzog proved to be not prepared to resign, nothing else remained for me but to dissolve the Government by my own resignation.

#### 4. NEW ZEALAND

##### *The New Government in New Zealand*

(*The Round Table* (Macmillan, London), December 1912, pp. 179-80)

(The Liberal-Labour Government was defeated in the House on July 6, 1912, and was succeeded at once by a Reform Ministry led by Mr. Massey.)

It may be said without hesitation that the new Reform Ministry is distinctly Imperialist. In the dispatch of contingents to South Africa, in increasing the contributions to the Navy and in the presentation of the Dreadnought the Reform party gave the Ministry in office their support, and in the matter of the dispatch of the contingents they claim to have been chiefly instrumental in bringing Mr. Sedden<sup>1</sup> up to the mark. Mr. Massey, it is true, objected to Sir Joseph Ward's<sup>2</sup> making the offer of the Dreadnought on ministerial authority without first consulting Parliament, but he thoroughly approved of a gift to the Royal Navy in time of peril. Mr. Massey, moreover, has taken occasion to emphasize the Imperial sentiment of the Ministry, and his concurrence in the view that the time was coming when the Dominions would in some way be admitted into the Councils of the Empire, as well as take a larger share in its defence. He added that the present Government intended to join with the Governments of the other nations of the Empire in doing everything they could to strengthen the Imperial organization. There had been no hanging back in New Zealand so far as Imperial matters were concerned, and the present Government would ask the people to do their duty, in the first instance to the Imperial Navy, and then to land defences. It is also noteworthy that Mr. Allen, perhaps of all the Ministers the keenest student of Imperial affairs, holds strong views on the importance of the Pacific, and looks forward to the time when the Mother Country and the Dominions will unite in maintaining an Eastern Fleet of Empire.

#### B. IMPERIAL CO-OPERATION

##### I. CO-OPERATION WITH THE DOMINIONS

###### (a) *The Problem of Imperial Defence*

(*The Round Table* (Macmillan, London), May 1911, pp. 251-4)

There can be no doubt that the Empire is gradually approaching a crisis in its history. After a century of quiet the external danger has

<sup>1</sup> Prime Minister, 1893-1906.

<sup>2</sup> Prime Minister, 1906-11.



revived in an acute form. Germany is piling up armaments in support of her policy of expansion. And all the other nations of the earth are following suit. This terrific growth of armaments controlled by peoples, some of whom look to the use of force as the instrument of their national progress, some of whom have but recently joined the number of civilized nations and whose policy none can foretell, is a grave menace to the safety of the Empire. And while the external dangers of the Empire are thus steadily increasing the system of defence by which its integrity has been preserved is breaking down. Great Britain is no longer able to maintain a preponderant navy on all the chief oceans of the globe, and unity in foreign policy and defence, which has been the fundamental basis of the external policy of the Empire hitherto, is gradually being impaired.

The truth is that the safety of the Imperial system cannot be maintained much longer by the arrangements which exist at present. No one, in face of the facts brought forward in this article, can believe that the need for national strength is disappearing. The British naval budget and the creation of the Dominion navies alone disprove it. Yet it is quite clear that Great Britain alone cannot indefinitely guarantee the Empire from disruption by external attack. The further one looks ahead the more obvious does this become. . . .

It is not, however, on this ground that a reconsideration of the relations between Great Britain and the Dominions about foreign affairs and defence is becoming urgent. Great Britain can probably defend the Empire, at any rate if the international situation is favourable, for some, perhaps for many, years to come. The other half of the difficulty is far more pressing and far more dangerous. It is simply impossible for the Dominions to set up independent foreign policies and independent defensive systems of their own without destroying the Empire, even if foreign powers refrain from attack. Suppose the present tendency carried to its logical conclusion. Instead of there being one government responsible for the safety of the Empire there will be five. Each of these governments will be free to pursue any policy it likes and each will have military or naval strength with which to back its policy. Each of them, therefore, may involve itself in war. And if the policy of one government, or the use it makes of its navy, does lead to war, what is to be the position? Are the other governments to be involved? The Dominions, not unreasonably, do not admit their responsibility for the policy of Great Britain, because they have no share in framing it. Is Great Britain to be responsible for the policy of the Dominions? Australia, for instance, is committed to the policy of Asiatic exclusion—a policy which may lead to international complications of the gravest kind. Are Great Britain and the other Dominions committed to support this policy and are they responsible for making the naval and military preparations necessary to guarantee its being carried into effect? On

the other hand Great Britain is responsible for maintaining intact the Imperial system as a whole. Is her government not to know what resources in men, ships and money can be depended upon, in making her dispositions for defence? And are the Dominions to be left to frame policies which may render it impossible for England to make the international agreements by which alone the safety of the Empire can be maintained? . . .

Obviously, the principle of complete local autonomy, admirably as it works for the internal politics of the Empire, cannot be applied to foreign affairs. The Empire will infallibly disappear if any one of five governments can involve it in war. Even if in its weakness and confusion it is spared by foreign powers, it will break up of its own accord, for every one of the five nations of which it is composed will declare its independence, rather than remain a part of a system in which it may find itself at war by the deliberate policy or imprudent folly of any one of four other governments, over none of which it has any sort of control. The conclusion is inexorable. Either the nations of the Empire must agree to co-operate for foreign policy and defence, or they must agree to dissolve the Empire and each assume the responsibility for its own policy and its own defence. There is no half-way house between the two positions. There is no third alternative. The present system cannot continue. It neither provides for the safety of the Imperial system as a whole nor for the safety of the Dominions within it. Somehow or other the nations of the Empire must agree upon the interests they are to defend in common and frame a policy towards foreign powers and a system of defence which they are all committed to support, or they will be faced with the necessity of providing by themselves for their own defence. . . .

(b) '*Downing Street*'

(*The Round Table* (Macmillan, London), September 1913,  
pp. 596-600)

. . . To meet the increasing interest . . . taken by the Dominions and Colonies in foreign policy, there has of late been a tendency to develop the Imperial machinery in at least three ways—first, by semi-independent action on the part of the Dominion Governments; second, by providing that those Governments shall be consulted on questions of foreign policy affecting them; and third, by placing at the disposal of the Dominion Governments the services of the Imperial diplomatic and consular officers.

With regard to the first point, Canada has taken semi-independent action in the negotiation of commercial treaties and in the regulation of oriental immigration. At the time of the negotiation of the commercial treaty between Canada and France considerable misgivings were expressed by some Canadians as to the dangers of such a course.

Apart, however, from the question how far such a policy should be carried, it must be remembered that all steps taken by Canada in this way have had the sanction of the Imperial Government, and that, such sanction having been given, the action of Canada differs in kind hardly at all from that taken from time to time by Crown Colonies, under authority from the Imperial Government, in matters solely affecting themselves. A more important point is the recent establishment by treaty between the United States and Great Britain of machinery for the semi-independent settlement of questions between the United States and Canada relating to *Boundary Waters*. The International Joint Commission constituted under the treaty of 1909 is composed of three members from each country, and has, in addition to its ordinary functions, power to act as a Court for the settlement of any question which the two Governments may decide to submit to it. The experiment is an interesting one, but, technically at least, it does not constitute a departure from the existing system of Imperial relations, since the Canadian Commissioners act as appointees of the Imperial Government, and a special agreement between the Imperial Government and the Government of the United States would be necessary for the submission to the Commission of any question outside its ordinary sphere. In the commercial sphere, the Dominions, especially Canada, have appointed their own Trade Commissioners in various parts of the world; but so far as can be seen, these Commissioners have in no way trenched on the sphere of policy, and have confined their activities to the furthering of trade.

As regards the second point, the future historian will possibly quote the resolutions passed by the Imperial Conference of 1911, as indicating the moment at which the Dominions were first recognized as being entitled to a voice in foreign policy. These resolutions, which arose out of the discussion at the Conference of the Declaration of London, stipulated that 'the Dominions shall be afforded an opportunity for consultation when framing the instructions to be given to British delegates at future meetings of the Hague Conference, and that conventions affecting the Dominions, provisionally assented to at that Conference, shall be circulated among the Dominion Governments for their consideration before any such convention is signed', and that 'a similar procedure, where time and opportunity and the subject-matter permit, shall as far as possible be used when preparing instructions for the negotiation of other international agreements affecting the Dominions'.

But though these somewhat cautiously worded resolutions represent to a certain extent an advance and are at any rate a formal expression of policy, yet the policy they express is an old one and has, indeed, always been a necessity. In the general arbitration treaty between Great Britain and the United States, signed in 1908, Great Britain expressly reserved the right to consult the Dominions upon

any question affecting them, before finally concluding a special agreement for its submission to arbitration. Already, in 1897, Great Britain had denounced her commercial treaties with Germany and Belgium at the request of the Dominion Governments, expressed at the Colonial Conference of that year. In the case of treaties requiring legislation, including commercial treaties, consultation with the Dominions is a matter of course; and such treaties are commonly signed for Great Britain only with a proviso granting to the Dominions, and where necessary to Crown Colonies and Protectorates, the right of accession, which right carries with it in many cases, if not in all, a corresponding right of subsequent withdrawal—a right not infrequently exercised by the Dominions. This right was explicitly recognized by the Conference of 1911, for Great Britain then undertook to open negotiations with those countries with whom she had 'most favoured nation' treaties of old date, with a view to securing to the Dominions the same right of separate withdrawal from such treaties as they now enjoy in the case of more recent treaties.

In other matters also less directly affecting the Dominions the Government in London has always recognized the necessity of obtaining the sanction of a Dominion Government before taking any steps which might involve that Government, though . . . it has too often failed through ignorance to realize the interest of a Dominion in certain questions with which it has had to deal. In connexion with this point it may be observed that Mr. Borden stated in the Canadian House of Commons, in the spring of 1911, that in his opinion there should be inserted in every treaty belonging to one of the following classes an article making its provisions subject to the consent of the Parliament of any Dominion interested—namely, all treaties imposing any burden on the people, those involving a change in the law of the land, those requiring legislative action to make them effective or which affect the free exercise of the legislative power, and those affecting territorial rights. It may safely be said, however, that though no stipulation for parliamentary ratification has been inserted in such treaties in the past, they have not been, and certainly never will be, concluded without either the consent of the Dominion Government concerned or, as already stated, a proviso leaving open to such Government the right of separate accession.

As to the third point, hardly any definite step has been taken to put the Dominions in touch with the foreign services of the Crown. Those services—diplomatic and consular—have always been at the disposal of the Dominion and Colonial Governments, but theoretically the system still prevails by which communications between such Governments and the foreign representatives of the Crown pass tortuously through the Colonial and Foreign Offices and often also through the Dominion High Commissioners in London. In the autumn of 1912 notices appeared in the Press to the effect that the

Canadian Minister of Trade and Commerce had arranged with the Imperial Government that the services of the Imperial consular officers should be placed generally at the disposal of Canada. But all such 'arrangements' only confirm existing custom. In cases where Dominion or Colonial Governments, or the merchants and other private persons residing and doing business in their territories, have business or interests which put them in frequent touch with a foreign country or with the commercial firms in such a country, those Governments, or persons, have always, and will always, enter into direct communication with the Imperial diplomatic and consular officers in that country, and the mysterious alchemy by which the requests of a Dominion Government are transmuted in the laboratory of the Foreign Office into 'instructions' has been, and will be, discarded. The standing, and, up to date, perhaps the only important, example of this development is the Embassy at Washington, where Mr. Bryce has stated that at least two-thirds of the business transacted is transacted on behalf of Canada, and where in fact, though not in name, as may be seen from published correspondence, the Imperial representative receives concurrent instructions from the Secretary of State for Foreign Affairs, the Governor-General of Canada, and the Governor of Newfoundland.

## 2. THE IMPERIAL CONFERENCE

### (a) *Report of the Imperial Conference, 1907*

(*Parliamentary Papers (Great Britain)*, 1907, Cd. 3523, p. v)

#### Resolution I

That it will be to the advantage of the Empire if a Conference, to be called the Imperial Conference, is held every four years, at which questions of common interest may be discussed and considered as between His Majesty's Government and His Governments of the self-governing Dominions beyond the seas. The Prime Minister of the United Kingdom will be *ex-officio* President, and the Prime Ministers of the self-governing Dominions *ex-officio* members of the Conference. The Secretary of State for the Colonies will be an *ex-officio* member of the Conference and will take the chair in the absence of the President. He will arrange for such Imperial Conferences after communication with the Prime Ministers of the respective Dominions. Such other Ministers as the respective Governments may appoint will also be members of the Conference—it being understood that, except by special permission of the Conference, each discussion will be conducted by not more than two representatives from each Government, and that each Government will have only one vote.

That it is desirable to establish a system by which the several Governments represented shall be kept informed during the periods

between the Conferences in regard to matters which have been or may be subjects for discussion by means of a permanent secretarial staff charged, under the direction of the Secretary of State for the Colonies, with the duty of obtaining information for the use of the Conference, of attending to its resolutions, and of conducting correspondence on matters relating to its affairs.

That upon matters of importance requiring consultation between two or more Governments which cannot conveniently be postponed until the next Conference, or involving subjects of a minor character or such as call for detailed consideration, subsidiary Conferences should be held between representatives of the Governments concerned specially chosen for the purpose.

(b) *Report of the Imperial Conference, 1911*

(*Précis of the Proceedings, Parliamentary Papers (Great Britain), 1911, Cd. 5741, pp. 14-18, 23-9, 19-20, 37-40*)

(May 25) Sir Joseph Ward resumed his speech in support of the following resolution:

That the Empire has now reached a stage of Imperial development which renders it expedient there should be an Imperial Council of State, with representatives from all the self-governing parts of the Empire, in theory and in fact advisory to the Imperial Government on all questions affecting the interests of His Majesty's Dominions oversea.

After briefly summarizing the arguments which he had put forward at the last meeting, he said that

The question became the more urgent and emphatic when they remembered that at least two of the greatest of the Dominions had already embarked on naval policies of their own. Such action emphasized the need for some Imperial Council properly accredited to co-ordinate and harmonize the policy of naval defence and the still greater question of naval supremacy.

The question of independent naval policies did not make for the strongest position in connexion with the maintenance of Imperial ties. He would prefer to call the suggested body 'An Imperial Parliament of Defence', as defence was above all other questions the one in which every part of the Empire was vitally concerned, and it could be treated satisfactorily only by a properly constituted Council of State or Parliament.

At present the different parts of the Empire had no voice whatever in questions concerning peace or war, in which, however, they were all vitally concerned. New Zealand, for instance, made a contribution, and as time went on she looked forward to substantially increasing its amount. But if the Oversea Dominions could please themselves about contributing to the Imperial Treasury for the creation and maintenance of the Navy, they were surely entitled to some voice in

these questions which so vitally affected them. The question of an Imperial Council of Defence was even more important for the United Kingdom than for the Oversea Dominions in view of the burden imposed by her naval necessities. The Empire consisted of a group of free nations, and the day for a partnership in Imperial affairs had arrived. . . .

(His concrete proposals involved an annual contribution based on the white population of the Empire, an Imperial House of Representatives in which the United Kingdom would have 220 members and all the Dominions combined 77, and an Imperial Council in which the Dominions would have ten representatives and the United Kingdom two.)

Sir Wilfrid Laurier pointed out that the resolution was in favour of the creation of a council advisory to the Imperial authority, but the arguments of Sir Joseph Ward were in favour of something very different. What Sir Joseph proposed was not an advisory council, but a legislative body elected by the people of the United Kingdom and the Dominions beyond the Seas with power to create expenditure, but no responsibility for providing the necessary revenue to meet that expenditure. Such a system was indefensible. The body might say that five, ten, or twenty million pounds were necessary—so much for each of the different portions of the Empire—and then the respective Governments would be dumb agents in carrying out the decision. They would simply have to provide the money asked for. Such a proposal he thought was absolutely impracticable.

Mr. Fisher agreed as to the impracticability of the proposal. It would violate the very principle of responsible Government and the very basis of the Government of the United Kingdom. The question of the local systems of naval defence adopted by New Zealand and Canada could be better discussed on another occasion. In Australia they relied on the Government of the United Kingdom to generally safeguard the whole interests of the Empire in the matter of the Navy, and the Commonwealth would defend Australia particularly by its own naval and military forces. He could not support the proposition before the Conference. He did not say that there was no possibility of an Advisory Council to deal with matters that might from time to time arise, so that communications might be made to the representatives on the spot, and that he thought was ample in the meantime. . . .

General Botha said that . . . they were all deeply anxious to bring the different parts of the Empire together as closely as possible, but he believed that such a body as that proposed would only become meddlesome and continually interfere with the domestic concerns of the various parts of the Empire, and cause nothing but unpleasantness and friction. He believed that by the political genius which characterized the British race a solution of this difficult problem would ulti-

mately be evolved, but they must not try to force the pace. It was the liberty which the various people under the British flag enjoyed which bound them to the Mother Country, and any scheme which did not fully recognize that would only bring disappointment.

Mr. Asquith said that . . . it was much easier to express an abstract aspiration in favour of closer political union than to translate that aspiration into practical terms. . . . What would Sir Joseph Ward's scheme come to in practice? It would impair, if not altogether destroy, the authority of the Government of the United Kingdom in such grave matters as the conduct of foreign policy, the conclusion of treaties, the maintenance of peace or the declaration of war. The responsibility of the Imperial Government subject to the Imperial Parliament in these matters could not be shared, and the co-existence side by side with the Government of the United Kingdom of this proposed body with the functions and jurisdiction which it was suggested should be entrusted to it would be fatal to the present system of responsibility. The proposed body would further have power to impose upon the Dominions a policy from which one or more of them might dissent, which in many cases would involve expenditure, and that expenditure would have to be met by taxation, although the people of the Dominion might not approve the policy. Speaking for the British Government, they could not assent to a proposal so opposed to the fundamental principles on which the Empire had been built up and carried on.

(*June 1*) Mr. Fisher, on behalf of the Commonwealth of Australia, moved:

That it is regretted that the Dominions were not consulted prior to the acceptance by the British delegates of the terms of the Declaration of London; that it is not desirable that Great Britain should adopt the inclusion in Article 24 of food stuffs in view of the fact that so large a part of the trade of the Empire is in those articles. . . .

He said that . . . the first part of the resolution was that to which they attached the most importance. Hitherto the Dominions had not been consulted prior to negotiations being entered upon by the Mother Country and other countries in regard to treaties or conventions, and that, he thought, was a weak point in their position as self-governing communities. Being a family of nations, they thought the time had arrived when they should be informed, and, if need be, consulted, before arrangements were entered into with other countries by which their interests were affected. They did not desire at all to restrict the powers of the Mother Country; they merely wished to be taken, whenever possible, fully into her confidence. The Declaration of London afforded a most suitable opportunity of illustrating his argument in this respect. . . .

Sir Edward Grey said that . . . the Government entirely agreed that



the Dominions ought to be consulted. They would be consulted before the next Hague Conference took place, and they would be consulted automatically about everything which arose out of it.

Mr. Fisher said that their desire was to be consulted before things were actually done, as far as it was practicable to do so.

Sir Edward Grey said the Government thoroughly understood the point and desired in practice to meet it. . . .

Sir Wilfrid Laurier said that it was a very far-reaching proposition that the Dominions should be consulted in regard to treaties negotiated by the Home Government. As to commercial treaties, the practice had been already adopted of never including the Dominions beyond the Seas without their consent, and that implied consultation. In Canada they had claimed the liberty of negotiating their own treaties of commerce, and it had been given them. As to other treaties, it might seriously embarrass the Home Government if they had to consult the Dominions, as they might have advice from Australia in one direction, advice from New Zealand in another, and advice from Canada in a third. Although the Empire was a family of nations, by far the greater burden had to be borne on the shoulders of the Government of the United Kingdom, and it would be going too far to say that in all circumstances the Dominions beyond the Seas were to be consulted. If a Dominion insisted on being consulted in regard to matters which might result in war, that would imply the necessity that they should take part in the war. He thought, on the whole, it would be better to leave the matter entirely in the discretion of the Home Government. . . .

(*June 2*) General Botha said that . . . he felt that it was in the highest interests of the Empire that the Imperial Government should not definitely bind itself to any agreement with a foreign country which might affect a particular Dominion, without first consulting that Dominion. He did not wish it to be inferred that South Africa felt any grievance as to their treatment in the past; he only wished to take this opportunity of stating that South Africa claimed this to be a sound principle in the best interests of the Empire. He felt quite satisfied with the reasons which Sir Edward Grey had given why the Dominions were not consulted at an earlier stage, and he felt that it would not be fair to pass the first part of the resolution as it stood. . . .

Mr. Fisher pointed out that the resolution was not intended to hit either the Home Government or the Declaration itself. . . . They had thought that for many years they ought to be consulted in some way, not merely prior to the signing of a Declaration or Treaty affecting their interests, but before the ideas of the Imperial Government had matured. Promises had been made before, but there had never been such a definite statement as that made on the previous day by the Secretary of State, and they felt gratified that a new condition of

affairs would in future prevail. . . . He asked leave to withdraw the resolution and to substitute the following:

That this Conference, after hearing the Secretary of State for Foreign Affairs, cordially welcomes the proposal of the Imperial Government, viz.:

- (a) that the Dominions shall be afforded an opportunity of consultation when framing the instructions to be given to British delegates at future meetings of the Hague Conference, and that Conventions affecting the Dominions provisionally assented to at that Conference shall be circulated among the Dominion Governments for their consideration; and
- (b) that a similar procedure where time and opportunity and the subject-matter permit, shall as far as possible be used when preparing instructions for the negotiation of other International Agreements affecting the Dominions.

Mr. Asquith said that the resolution carried out exactly what Sir Edward Grey had undertaken should be the procedure in future.

The resolution was unanimously agreed to.

(May 25) Mr. Harcourt said that the Government, sharing in the desire for closer co-operation and more continuous knowledge between one Conference and another, had endeavoured to meet many of the points raised by Sir Joseph Ward's Resolutions (on proposed changes in the Colonial Office). . . . The Government were prepared . . . to set up a standing Committee of the Imperial Conference containing the Secretary of State, the Parliamentary Under-Secretary, the Permanent Under-Secretary, the High Commissioners of the different Dominions or representatives, and a representative of Newfoundland. That Committee would meet at as frequent intervals as was necessary to consider the carrying out of resolutions of the Conference, proposals for the next Conference, any subsidiary matters that might arise, and any cognate questions properly referable to it. Such a Committee must be absolutely advisory and not executive. Communications by the Dominion Governments to the Committee would reach it through the Governors-General and the Secretary of State. It would be an advantage if the Secretary of State had power to summon to the Committee the political or permanent heads of any other departments on questions by which they were specially affected. It might be desirable to define more clearly the status which the Dominions wished their High Commissioners to have in relation to these matters. Such a body should not be tied down too closely as to personnel, but too frequent changes of representatives would militate against continuity or knowledge of the work.

It must be clearly understood that the Committee should have no legislative or executive power. The suggestion was put forward to meet what the Government believed to be a desire of some of the Dominions to be in closer touch than they were at present with the

Imperial Government. The suggestion, if adopted, would not make any real alteration in their relations, but would tend to strengthen the continuity of the Imperial Conference. . . .

(June 8) The Conference resumed the consideration of the proposal for a Standing Committee outlined by the Secretary of State for the Colonies last week. . . .

Mr. Fisher thought the time had arrived when there should be a body to carry on the work between the Conferences. Hitherto responsible Ministers had told the Conference what they could about the administration of their respective Departments, but this year the Home Government had taken the delegates entirely into their confidence in regard to matters of great concern to them all. This made it all the more necessary that there should be some subsidiary body to facilitate closer communication than had hitherto existed. He agreed that such a body, if established, should be purely advisory, and that the respective Dominions should be free to appoint their own representatives. . . .

General Botha said he could not accept the proposal as it stood. The object of the Conference was to secure uniformity, and to obtain the attendance of members of the same standing. This would not be secured if some Dominions sent their High Commissioners to represent them and others selected officials of a different kind. In his view the member of the Conference responsible for carrying out the decisions arrived at must be the Minister of the Imperial Government who presided. He was wholly in favour of subsidiary conferences to which Ministers from overseas would be sent to consider special questions. The proposed Standing Committee ought not to discuss matters of that kind or to interfere in any way with the work of the responsible Governments. In his view the Secretary of State could do what was required quite as well as any Committee. . . .

Sir Wilfrid Laurier said he would view with serious apprehension the interference of any body whatever between the Home Government and the Governments of the Dominions. He adhered to the position he took up four years ago, that the relations between the Dominions and the Mother Country should be carried on by themselves. The organization of the Colonial Office had given ample satisfaction, and he thought they should leave matters as they were at present.

. . . Mr. Harcourt said that it was not at all the intention of the Government that the proposal should be in any way derogatory to the position of the Dominion Governments. He had offered himself for the purpose of being advised in order to relieve the Dominions from a situation which he was sure they would not tolerate. He had never contemplated that the members of the Committee should ultimately be members of the Conference. It was clear, however, that there was not sufficient unanimity to make it worth while to proceed

farther with the proposal. The suggestion was made in order to meet what the Government believed to be the desire of some of the Dominions; it did not represent any conscious want on the part of the Home Government.

### 3. THE COMMITTEE OF IMPERIAL DEFENCE

- (a) *Dispatch regarding Dominion Representation on the Committee of Imperial Defence, December 10, 1912*  
(*The London Times*, January 4, 1913)

A Parliamentary White Paper (Cd. 6560) containing a dispatch from the Secretary of State for the Colonies as to the representation of the Self-governing Dominions on the Committee of Imperial Defence was published last night. The dispatch is addressed to the Governor-General of Australia; the Governor-General of the Union of South Africa; and the Governors of New Zealand and Newfoundland. It reads as follows:

Downing Street, 10th December, 1912.

I am forwarding by post, for the confidential information of your Ministers, a record of the proceedings at the Committee of Imperial Defence on May 30th, 1911 (during the Imperial Conference) and on August 1st, 1912 (during the visit of the Canadian Ministers to London).

This record deals solely with the question of the representation of the Dominions on the Committee of Imperial Defence.

(*Omitted to New Zealand.* Your Ministers, who were present on the first occasion, will remember that) the matter arose out of a resolution by Sir Joseph Ward on the Agenda of the Imperial Conference, asking that the High Commissioners of the Dominions should be summoned to the Committee of Imperial Defence when naval and military matters affecting the Oversea Dominions were under consideration. The unanimous view of all those present on May 30th, 1911, was that the representation of the Dominions should be not by the High Commissioner but by Ministers who would be responsible to their own colleagues and Parliament, and at the same time it was decided that a Defence Committee should be established in each Dominion which would be kept in close touch with the Committee of Imperial Defence at home. The Resolutions ultimately put forward by His Majesty's Government and accepted unanimously by the members of the Imperial Conference at the Committee of Imperial Defence were as follows:

(1) That one or more representatives, appointed by the respective Governments of the Dominions, should be invited to attend meetings of the Committee of Imperial Defence when questions of naval and military defence affecting the Oversea Dominions are under consideration.

(2) The proposal that a Defence Committee should be established in each Dominion is accepted in principle. The constitution of these Defence Committees is a matter for each Dominion to decide.

The Canadian Government having changed in the autumn of 1911 it was necessary, when Mr. Borden and his colleagues visited England this summer, to put these proposals before them, as they were of course unaware of the previous proceedings. Subject to consultation with his colleagues in Canada, Mr. Borden provisionally accepted the resolutions as passed, and stated that he saw no difficulty in one of his Ministers, either with or without portfolio, spending some months of every year in London, in order to carry out this intention. Mr. Asquith and I had, subsequently, several private conversations with him, at which he expressed the desire that the Canadian and other Dominions Ministers who might be in London as members of the Committee of Imperial Defence should receive, in confidence, knowledge of the policy and proceedings of the Imperial Government in foreign and other affairs. We pointed out to him that the Committee of Imperial Defence is a purely advisory body and is not, and cannot under any circumstances become, a body deciding on policy, which is and must remain the sole prerogative of the Cabinet, subject to the support of the House of Commons. But at the same time we assured him that any Dominions Minister resident here would at all times have free and full access to the Prime Minister, the Foreign Secretary, and the Colonial Secretary for information on all questions of Imperial policy. In a public speech which I made a short time ago I used the following words:

There is, on the part of Canadian Ministers and people, a natural and laudable desire for a greater measure of consultation and co-operation with us in the future than they have had in the past. This is not intended to, and it need not, open up those difficult problems of Imperial Federation which, seeming to entail questions of taxation and representation, have made that policy for many years a dead issue. But, speaking for myself, I see no obstacle and certainly no objection, to the Governments of all the Dominions being given at once a larger share in the executive direction in matters of defence and in personal consultation and co-operation with individual British Ministers whose duty it is to frame policy here. I should welcome a more continuous representation of Dominion Ministers, if they wish it, upon the Committee of Imperial Defence; we should all be glad if a member or members of these Cabinets could be annually in London. The door of fellowship and friendship is always open to them and we require no formalities of an Imperial Conference for the continuity of Imperial confidence.

The foregoing accurately represents the views and intentions of His Majesty's Government.

From Mr. Borden's public speech in introducing the Canadian Naval Bill, it appears that he accepts the proposals which we have made. The same offer is, of course, open to all the other self-governing Dominions if and when they wish to adopt it, but the proposal

is not one of necessary or strict uniformity and can be varied in the case of each or any Dominion to suit their wishes or the special circumstances of their case. I should be glad to know, at their convenience, whether your Ministers desire to adopt some such method of more continuous connexion in naval and military affairs with the Committee of Imperial Defence in the United Kingdom.

I have, &c.,

L. HARCOURT.

(The replies of the Dominions to the above dispatch are given in *Parl. Papers (Great Britain)*, 1914, Cd. 7347, pp. 6-13.

Australia found it impossible to send any Ministers to England for the ensuing year; but suggested a Conference in New Zealand, South Africa or Canada to discuss co-operation in naval defence. The general question of consultation as advanced by Sir Robert Borden was not mentioned.

South Africa expressed its appreciation of the willingness of the Imperial Government to consult with the Dominions, and 'noted with pleasure' that 'no new departure in constitutional practice is intended, but that the proposals of His Majesty's Government are simply a further expression of that spirit of mutual consultation and helpful co-operation' which had characterized Imperial relations in the past. 'The existing machinery for consultation and suggestion had thus worked so smoothly that Ministers would be loath to see any new departure inaugurated which might in the end prove less satisfactory in practice. In particular, they doubt whether the idea of a Minister of the Union residing in London for the purpose of constantly representing the Union Government on the Imperial Defence Committee is practicable. As long as the control of foreign policy remains, as under present conditions it must necessarily remain, solely with the Imperial Government, and the Imperial Government continue, as agreed at the last Imperial Conference, to consult the Dominions on all questions of foreign policy which affect them individually, Ministers do not think it necessary to have a Union Minister in constant attendance at the Imperial Defence Committee.' If and when consultations with the Committee were necessary, a Minister of the Union could visit London for that purpose.

New Zealand intimated that the Government did 'not consider it advisable at present for a permanent appointment to be made, but rather that, when at any time accredited Ministers of the Government of the Dominion are in England, they may be invited to attend the deliberations of the Committee of Imperial Defence'.

Newfoundland replied that the arrangement made with Canada was acceptable, 'namely, that we see no difficulty in Ministers from this Colony when in London putting themselves in touch with the Imperial Defence Committee'.

(b) *Canadian Naval Policy and the Committee of Imperial Defence*  
(*Canadian House of Commons Debates*, December 5, 12, 1912,  
pp. 676-93, 1022-38)

(December 5) Rt. Hon. R. L. BORDEN (Prime Minister): The evolution of the constitutional relations within the Empire during the past half century has not been less marked than its material progress. In

this constitutional development we are necessarily confronted with the problem of combining co-operation with autonomy. It seems most essential that there should be such co-operation in defence and in trade as will give to the whole Empire an effective organization in these matters of vital concern. On the other hand, each Dominion must preserve in all important respects the autonomous government which it now possesses. Responsibility for the Empire's defence upon the high seas, in which is to be found the only effective guarantee of its existence, and which has hitherto been assumed by the United Kingdom, has necessarily carried with it responsibility for and control of foreign policy. . . . When Great Britain no longer assumes sole responsibility for defence upon the high seas, she can no longer undertake to assume sole responsibility for and sole control of foreign policy which is closely, vitally, and constantly associated with that defence in which the Dominions participate. It has been declared in the past, and even during recent years, that responsibility for foreign policy could not be shared by Great Britain with the Dominions. In my humble opinion, adherence to such a position could have but one and that a most disastrous result. During my recent visit to the British islands, I ventured on many public occasions to propound the principle that the great Dominions, sharing in the defence of the Empire upon the high seas, must necessarily be entitled to share also in the responsibility for and in the control of foreign policy. No declaration that I made was greeted more heartily and enthusiastically than this. It is satisfactory to know that to-day not only His Majesty's ministers but also the leaders of the opposite political party in Great Britain have explicitly accepted this principle and have affirmed their conviction that the means by which it can be constitutionally accomplished must be sought, discovered, and utilized without delay.

Before proceeding to declare and explain the proposals of the Government, I desire to call attention to certain remarks which I addressed to this House just two years ago in replying to inquiries as to the course we would pursue after attaining power. These remarks were as follows:

It may be fairly asked what we would do if we were in power to-day with regard to a great question of this kind. It seems to me that our plain course and duty would be this: The Government of this country are able to ascertain and to know, if they take the proper action for that purpose, whether the conditions which face the Empire at this time in respect of naval defence are grave. If we were in power we would endeavour to find that out, to get a plain, unvarnished answer to that question, and if the answer to that question, based upon the assurance of the Government of the Mother Country and the report of the naval experts of the Admiralty were such—and I think it would be such—as to demand instant and effective action by this country, then I would appeal to Parliament for immediate and effective aid, and if Parliament did not give immediate and effective aid I would appeal from Parliament to the people of the country.

Then, Sir, as to the permanent policy, I think the people have a right to be consulted. I do not know whether I have made my position clear but I have done so according to my humble capacity. I think the question of Canada's co-operation upon a permanent basis in Imperial defence involves very large and wide considerations. If Canada and the other Dominions of the Empire are to take their part as nations of this Empire in the defence of the Empire as a whole, shall it be that we, contributing to that defence of the whole Empire, shall have absolutely as citizens of this country, no voice whatever in the councils of the Empire? I do not think that such would be a tolerable condition. I do not believe the people of Canada would for one moment submit to such a condition. Shall members of this House, representative men, representing 221 constituencies of this country from the Atlantic to the Pacific, shall no one of them have the same voice with regard to those vast Imperial issues that the humblest taxpayer in the British Isles has at this moment? It does not seem to me that such a condition would make for the integrity of the Empire, for the closer co-operation of the Empire. . . .

The present Government assumed office on the 10th of October, 1911, and met Parliament on the 17th day of November following. It is hardly necessary to point out that there was no opportunity until after the close of the session to visit Great Britain or to consult the Admiralty in any effective way. Shortly after the session closed I went to England accompanied by some of my colleagues, and for several weeks we had the opportunity from time to time of conferring with the British Government and of consulting with the technical and expert advisers of the Admiralty respecting the whole question of naval defence, and especially the conditions which confront the Empire at present and in the early future. . . .

The great outstanding fact which arrests our attention in considering the existing conditions of naval power is this: Twelve years ago the British navy and the British flag were predominant in every ocean of the world and along the shores of every continent. To-day they are predominant nowhere except in the North Sea. . . . It is neither necessary nor desirable in this place to discuss the probability or imminence of war. The real test of our action is the existence or non-existence of absolute security. We cannot afford to be satisfied with anything less than that, for the risks are too great. It should never be forgotten that without war, without the firing of a shot or the striking of a blow, our naval supremacy may disappear, and with it the sole guarantee of the Empire's continued existence. . . .

In presenting our proposals, it will be borne in mind that we are not undertaking or beginning a system of regular and periodical contributions. I agree with the resolution of this House in 1909,<sup>1</sup> that the payment of such contributions would not be the most satisfactory solution of the question of defence.

Upon the situation which I have disclosed to the House, the situa-

<sup>1</sup> *Infra*, p. 166.



tion is in my opinion sufficiently grave to demand immediate action. We have asked His Majesty's Government in what form temporary and immediate aid can best be given by Canada at this juncture. The answer has been unhesitating and unequivocal. Let me again quote it:

We have no hesitation in answering after a prolonged consideration of all the circumstances that it is desirable that such aid should include the provision of a certain number of the largest and strongest ships of war which science can build or money supply.

Upon inquiry as to the cost of such a battleship, we are informed by the Admiralty that it is approximately £2,350,000 including armament and first outfit of ordnance stores and ammunition. The total cost of three such battleships, which when launched will be the most powerful in the world, would be approximately \$35,000,000, and we ask the people of Canada through their Parliament to grant that sum to His Majesty the King of Great Britain and Ireland and of the overseas Dominions, in order to increase the effective naval forces of the Empire, to safeguard our shores and our sea-borne commerce, and to make secure the common heritage of all who owe allegiance to the King.

These ships will be at the disposal of His Majesty the King for the common defence of the Empire. They will be maintained and controlled as part of the Royal Navy; and we have the assurance that if at any time in the future it should be the will of the Canadian people to establish a Canadian unit of the Royal Navy, these vessels can be recalled by the Canadian Government to form part of that unit, in which case, of course, they would be maintained by Canada and not by Great Britain. . . .

I have alluded to the difficulty of finding an acceptable basis upon which the great Dominions, co-operating with the Mother Country in defence, can receive and assert an adequate voice in the control and moulding of foreign policy. We were brought closely in touch with both subjects when we met the British Ministers in the Committee of Imperial Defence. That Committee is peculiarly constituted, but in my judgment is very effective. It consists of the Prime Minister of Great Britain and of such persons as he may summon to attend it. Practically all the members of the Cabinet from time to time attend its deliberations, and usually the more important members of the Cabinet are present. In addition, the naval and military experts and technical officers of the various departments concerned are in attendance. A very large portion of the Committee's work is carried on by sub-committees, which are often composed in part of persons who are not members of the general committee itself, and who are selected for their special knowledge of the subjects to be considered and reported upon. The amount of work which has thus

been performed during the last five or six years in particular is astonishing, and I have no doubt that it has contributed largely to the future safety of the whole Empire in time of peril. The Committee is not technically or constitutionally responsible to the House of Commons, and thus it is not supposed to concern itself with policy. As so many important members of the Cabinet are summoned to attend the Committee, its conclusions are usually accepted by the Cabinet, and thus command the support of a majority of the House of Commons. While the Committee does not control policy in any way, and could not undertake to do so, as it is not responsible to Parliament, it is necessarily obliged constantly to consider foreign policy and foreign relations, for the obvious reason that defence, and especially naval defence, is inseparably connected with such considerations.

I am assured by His Majesty's Government that, pending a final solution of the question of voice and influence, they would welcome the presence in London of a Canadian minister during the whole or a portion of each year. Such minister would be regularly summoned to all meetings of the Committee of Imperial Defence, and would be regarded as one of its permanent members. No important step in foreign policy would be undertaken without consultation with such a representative of Canada. This seems a very marked advance, both from our standpoint and from that of the United Kingdom. It would give to us an opportunity of consultation, and therefore an influence which hitherto we have not possessed. The conclusions and declarations of Great Britain in respect to foreign relations could not fail to be strengthened by the knowledge that such consultation and co-operation with the overseas Dominions had become an accomplished fact.

No thoughtful man can fail to realize that very complex and difficult questions confront those who believe that we must find a basis of permanent co-operation in naval defence, and that any such basis must afford to the overseas Dominions an adequate voice in the moulding and control of foreign policy. It would have been idle to expect, and indeed we did not expect, to reach in the few weeks at our disposal during the past summer a final solution of that problem, which is not less interesting than difficult, which touches most closely the future destiny of the Empire, and which is fraught with even graver significance for the British islands than for Canada. But I conceive that its solution is not impossible; and, however difficult the task may be, it is not the part of wisdom or of statesmanship to evade it. And so we invite the statesmen of Great Britain to study with us this, the real problem of Imperial existence. . . .

(December 12) Rt. Hon. Sir WILFRID LAURIER (Leader of the Opposition): When four years ago my hon. friend from North Toronto (Mr. Foster) introduced this subject in a concrete form, we

were in control of the House, and the House will agree with me that we did not receive his motion in any carping spirit. The motion moved by my hon. friend was to this effect:

That, in the opinion of this House, in view of her great and varied resources, of her geographical position and national environments, and of that spirit of self-help and self-respect which alone befits a strong and growing people, Canada should no longer delay in assuming her proper share of the responsibility and financial burden incident to the suitable protection of her exposed coast line and great seaports.

We received the proposition of my hon. friend quite sympathetically, and we suggested to him that it would be advisable to enlarge it and to bring it to the broader basis of Imperial defence, in view especially of the new conditions which were then and had been for some time arising in Europe. I am bound to say that our suggestion was well received by our friends on the other side, and they in turn offered us some amendments which we were only too glad to receive. The original motion of my hon. friend, thus amended, was passed by the unanimous voice of Parliament. It was in these terms:

This House fully recognizes the duty of the people of Canada, as they increase in numbers and wealth, to assume in larger measure the responsibilities of national defence.

The House is of opinion that under the present constitutional relations between the Mother Country and the self-governing Dominions, the payment of regular and periodical contributions to the Imperial treasury for naval and military purposes would not, so far as Canada is concerned, be the most satisfactory solution of the question of defence.

The House will cordially approve of any necessary expenditure designed to promote the speedy organization of a Canadian naval service in co-operation with and in close relation to the Imperial navy, along the lines suggested by the Admiralty at the last Imperial Conference, and in full sympathy with the view that the naval supremacy of Britain is essential to the security of commerce, the safety of the Empire and the peace of the world.

The House expresses its firm conviction that whenever the need arises the Canadian people will be found ready and willing to make any sacrifice that is required to give to the Imperial authorities the most loyal and hearty co-operation in every movement for the maintenance of the integrity and honour of the Empire. . . .

As a result of the armaments which are now going on in Europe, England has been obliged to increase the margin of security which she relies on for her own defence, by reducing her naval forces in the outlying seas. Such is the condition; and, I ask once more, what is the remedy? In our humble judgement, the remedy is this, that wherever, in the distant seas, or in the distant countries—in Australia, Canada, or elsewhere—a British ship has been removed to allow of concentration in European waters, that ship should be replaced by

a ship built, maintained, equipped, and manned by the young nation immediately concerned. If the young nations of the Empire take hold of the equipment and manning of ships to look after the distant seas, concentration can easily take place in the waters of Europe, and the British Admiralty knows what zones it has to defend. This is the Australian policy; this ought to be the Canadian policy. I insist once more upon what is stated in the memorandum: There is no emergency, there is no immediate danger, there is no prospective danger. If there were an emergency, if England were in danger—no, I will not use that expression; I will not say if England were in danger, but simply if England were on trial with one or two or more of the great powers of Europe, my right hon. friend might come and ask, not \$35,000,000, but twice, three times, four times \$35,000,000. We would put at the disposal of England all the resources of Canada; there would not be a single dissentient voice.

But this is not the condition with which we have to deal. The condition that we have to deal with to-day is simply what I described a moment ago. This is not new. The memorandum which my right hon. friend submitted the other day disclosed nothing which we did not know before. Every word that is there we knew; every figure we knew. I may say more; every word, every figure in that memorandum we discussed four years ago. We discussed it in the month of March, 1909; and then we came to the conclusion, the unanimous conclusion, that the best method of helping England, of discharging our duty, was not by contribution, but by the creation of a Canadian navy. . . .

When England is at war, we are at war; but it does not follow that because we are at war, we are actually in the conflict. We can be in the conflict only through two things, namely, actual invasion of our soil, or, the action of the Parliament of Canada. . . . We were in the war with the American colonies; we were in it in the war with the American Republic in 1812-13; but we were not in it in the war with France; we were not in it in the war with Turkey; we were not in it in the Crimean War; we were not in it in the expedition to Abyssinia or the Soudan War of 1885. We might have been in that, but Sir John A. Macdonald, then leader of the Government, refused. Why should we attempt to trifle with such questions as these? Is it not a fact that our forces can go to war only by the action of this Parliament? You may give your sanction, now or at any time if you choose; but no one in this country will claim that we can go to war, except by the will of Parliament or by the force of circumstances. . . .

The present policy which my right hon. friend proposes settles nothing. The problem that you have to deal with is one which demands a permanent policy—a policy for to-day, for to-morrow, and for every day, so long as the armaments grow in Europe; and the duty which you owe to yourselves, to Canada, and to the Empire, is the

enactment of a permanent policy. . . . Whether we shall or shall not have a voice in all questions affecting peace and war is a very large proposition, and I would not at the present time pronounce finally upon it; but there are certain objections that present themselves at once to my mind. The diplomatic service of England is carried on by the Secretary of State for Foreign Affairs, and it is to-day in as good hands as it ever was. These transactions are very minute, very serious, and sometimes must be carried on with great secrecy. I understand that my right hon. friend proposes to the English Admiralty that there should be a representative of the Canadian Government all the time in England to confer with the Secretary of State for Foreign Affairs on all questions on which war may probably arise. If this is done for Canada, it must be done for Australia, for New Zealand, for South Africa and for Newfoundland, and I doubt very much if the Secretary for State for Foreign Affairs would receive much assistance from such a multitude of advisers. Supposing they do not agree, or supposing they do agree, how can we pretend to dictate in these matters, or even to take a part? The Foreign Office, only last year, had to deal with the question of the division of Persia. Are we to understand that Canada and all the other Dominions would be invited to discuss such a question with the Foreign Office? A few years ago the Afghan boundary question was a burning question with the Foreign Office. Of late years it has been put in the background by the fact that Russia has not been in a position to be aggressive. But that question may be revived. Within the last year, when the German Emperor sent warships to Agadir, the Foreign Office had to take immediate action upon the question whether Germany should be allowed a footing in North Africa. Would the Dominion of Canada also be interested in and be consulted upon this question? If so, it seems to me that this is opening a door to consequences which must be carefully considered before any action is taken. I do not wish to condemn the view taken by the right hon. gentleman; I do not now approve or condemn it; the subject is too new. But the point upon which I appeal to him, and to which I ask the attention of the House, is this, that we cannot postpone our preparation for defence until this question is settled. It may take a long time to settle it. Therefore, let it be settled by itself; but, in the meantime, let our preparations go on.

## SECTION II

### THE WAR AND THE PEACE TREATY, 1914-20

#### A. IMPERIAL RELATIONS DURING THE WAR, 1914-18

##### I. REPORT OF THE CANADIAN PRIVY COUNCIL ON THE REQUISITIONING OF CANADIAN SHIPS, JANUARY 30, 1917

(P.C. 3189)

The Committee of the Privy Council have had before them a report, dated 27th November, 1916, from the Minister of Justice, representing that recently upon consideration of the correspondence and circumstances with regard to the requisitioning by His Majesty's Government of the Canadian registered ship *C. A. Jacques*, he advised the dispatch of a cable message to the Secretary of State for the Colonies to the effect that Your Excellency's Government could not, in his opinion, acquiesce in the exercise as affecting Canadian vessels of the requisitioning power by independent action of His Majesty's Government, or otherwise than by or through Your Excellency's Government.

Upon more deliberate consideration of the matter, the Minister has reached the following conclusions, but he observes that it is not the intention of this submission to question the prerogative or the extent of the prerogative, which is for present purposes assumed to exist, for the taking of ships of British subjects for the defence and protection of the realm, or that the power may be exercised although the place of registry, or the domicile or residence of the owners, be not within the United Kingdom. It is the manner of the exercise of the power rather than the assertion of the power itself which is in question.

The Minister submits that in his view the question to be determined is not one of legal power but of constitutional right. This distinction is well recognized in the Conventions which control the exercise of legislative powers. For example, the Parliament of the United Kingdom has the legal power but not the constitutional right to legislate directly in respect of Canadian affairs and in doing so to repeal *pro tanto* the British North America Acts. It is submitted that the exercise of His Majesty's prerogative with respect to Canada must be governed by the like considerations. It is the Parliament of Canada alone which constitutionally can determine and prescribe the burdens to be borne by this Dominion or by any of its citizens for the purposes of this or any other war. Similarly when the prerogative of the Crown is to be exercised, the Minister has no doubt that in respect of all matters which involve a contribution by citizens domiciled in this country, this prerogative must be exercised upon the

advice of Your Excellency's Ministers and not upon the advice of the Government of the United Kingdom.

It is assumed that this proposition will not be controverted in its application to the taking for purposes of defence of property, real or personal, situate within the Dominion; and, although ships constitute a species of property of transitory or shifting physical location, their owners nevertheless have places of domicile and residence, and the property has a place of registry to one of which its locality should be referred; therefore the Minister apprehends that if a ship be registered and the owners be domiciled and reside within Canada, the compulsory displacing of the ownership or control of the ship in favour of the Crown for any public purpose should independently of the actual location at the time of the ship itself, be likewise a matter for the consideration and sanction of the Government of Canada through the means with which the Government is constitutionally endowed.

The Minister submits, further, that the method of exercising the requisitioning power, or the procedure by which the requisition is to be made effective, does not depend upon solution of the legal question, which may under existing instructions present some difficulty, as to whether Your Excellency is deputed to exercise this particular branch of the prerogative. Necessary executive powers may be delegated, or the exercise of the power may be sanctioned by the Parliament of Canada, or by the Governor-General by means of his special legislative authority; wherefore it seems that these powers affecting local interests are not incapable of local execution and therefore that the compulsory requisition for the national service of Canadian owned and registered ships, in circumstances which admit of the competent exercise of the power, should be effected by Your Excellency upon the advice of Your Excellency's advisers; and that independent action for this purpose on the part of His Majesty's Government conflicts with the constitutional autonomy of Canada in the present stage of its development.

It is needless to observe that any representations which His Majesty's Government may submit as to the necessity or advisability of taking over a Canadian ship for the purposes of the war will receive prompt and sympathetic consideration by Your Excellency's Ministers.

The Committee concur in the foregoing, and on the recommendation of the Minister of Justice, advise that Your Excellency may be pleased to communicate a statement of the conclusions of the Minister of Justice as herein set out to the Secretary of State for the Colonies as indicating the view of Your Excellency's Government as to the manner in which the war prerogative of His Majesty to take Canadian property for purposes of national defence should constitutionally be exercised.

All of which is respectfully submitted for approval.

## 2. THE IMPERIAL WAR CABINET

(*The Round Table* (Macmillan, London), June 1917, pp. 441-6)

When the Asquith Government fell on December 6, 1916, and Mr. Lloyd George was summoned by the King to form a new Administration, few people anticipated that an almost revolutionary change was about to take place in the custom and practice of the British Constitution. Yet a few days later they discovered that the Cabinet as known since the first days of constitutional government, consisting of the heads of the chief departments of State, presided over by the Prime Minister, was in abeyance, and that a new form of Cabinet had come into being, a War Cabinet of five men, only one of whom had administrative duties, while the other Ministers of the Crown presiding over the great departments occupied a somewhat uncertain status outside, being summoned into conference with the War Cabinet usually only when matters for which they were immediately responsible were under discussion. Other innovations . . . were made at the same time. These new arrangements were admittedly provisional. They represented a reaction from a system under which the responsible Cabinet had expanded to the unwieldy number of 23, and were manifestly dictated by the necessities of war. . . .

But there has been another change silently enacted during the past few weeks which later generations will, perhaps, regard as of greater permanent importance. One of the first acts of the new War Cabinet was to invite the Governments of the Dominions and of India to a special War Conference. In this invitation it was stated that the Conference was to consist of 'a series of special and continuous meetings of the War Cabinet in order to consider urgent questions affecting the prosecution of the war, the possible conditions on which, in agreement with our Allies, we could assent to its termination, and the problems which will then immediately arise'. The invitation added that 'for the purpose of these meetings your Prime Minister would be a member of the War Cabinet'. This invitation was accepted by all the overseas Governments except that of Australia, which found itself in the throes of a general election, and the delegates, including three representatives from India, assembled in London in the middle of March.

Almost at once, however, under the stress of necessity the meetings seem to have changed their intended character. The original idea had clearly been that the overseas representatives should sit as members of the ordinary War Cabinet, enlarged for the time being to include them. But in practice, while the special series of meetings of what came to be called the Imperial War Cabinet were held as originally intended, the pressure of facts made it necessary to hold



during the same period meetings of the ordinary War Cabinet for the transaction of urgent war business and for the consideration of the domestic affairs of the United Kingdom, and also meetings of an Imperial War Conference for the consideration of other Imperial business not immediately concerned with peace and war, which were not attended by members of the War Cabinet proper. There thus came to be differentiated, not by design but by the necessity of the time, three bodies: the ordinary War Cabinet of the British Isles, an Imperial War Cabinet consisting of the British War Cabinet and the Prime Ministers or other plenipotentiaries of the Dominions sitting in Cabinet together, under the chairmanship of the Prime Minister of the United Kingdom, and an Imperial War Conference consisting of representatives of the Governments of the Empire with certain British Ministers, but not the members of the British War Cabinet, sitting under the chairmanship of the Secretary of State for the Colonies for the discussion of ordinary Imperial business not directly concerned with peace and war.

The significance of these proceedings must be apparent to any student of constitutional government. They were set forth with great lucidity by Sir Robert Borden in his speech to the Empire Parliamentary Association on April 3:

It may be [he said] that in the shadow of the war we do not clearly realize the measure of recent constitutional development . . . the constitutional position which has arisen from the summoning of an Imperial War Cabinet. The British Constitution is the most flexible instrument of government ever devised. It is surrounded by certain statutory limitations, but they are not of a character to prevent the remarkable development to which I shall allude. The office of Prime Minister, thoroughly recognized by the gradually developed conventions of the Constitution, although entirely unknown to the formal enactments of the law, is invested with a power and authority which, under new conditions demanding progress and development, are of inestimable advantage. The recent exercise of that great authority has brought about an advance which may contain the germ and define the method of constitutional development in the immediate future. It is only within the past few days that the full measure of that advance has been consummated.

For the first time in the Empire's history there are sitting in London two Cabinets, both properly constituted and both exercising well-defined powers. Over each of them the Prime Minister of the United Kingdom presides. One of them is designated as the 'War Cabinet', which chiefly devotes itself to such questions touching the prosecution of the war as primarily concern the United Kingdom. The other is designated as the 'Imperial War Cabinet', which has a wider purpose, jurisdiction, and *personnel*. To its deliberations have been summoned representatives of all the Empire's self-governing Dominions. We meet there on terms of equality under the presidency of the First Minister of the United Kingdom; we meet there as equals, he is *primus inter pares*. Ministers from six nations sit around the council board, all of them responsible to their

respective parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility of its Ministers to their own electorate. For many years the thought of statesmen and students in every part of the Empire has centred around the question of future constitutional relations; it may be that now, as in the past, the necessity imposed by great events has given the answer.

The Imperial War Cabinet as constituted to-day has been summoned for definite and specific purposes, publicly stated, which involve questions of the most vital concern to the whole Empire. With the constitution of that Cabinet a new era has dawned and a new page of history has been written. It is not for me to prophesy as to the future significance of these pregnant events; but those who have given thought and energy to every effort for full constitutional development of the oversea nations may be pardoned for believing that they discern therein the birth of a new and greater Imperial Commonwealth.

It is clear that this new development will be permanent. Speaking on May 17 in the House of Commons the Prime Minister said:

The Imperial War Cabinet was unanimous that the new procedure had been of such service not only to all its members but to the Empire that it ought not to be allowed to fall into desuetude. Accordingly at the last session I proposed formally, on behalf of the British Government, that meetings of an Imperial Cabinet should be held annually or at any intermediate time when matters of urgent Imperial concern require to be settled, and that the Imperial Cabinet should consist of the Prime Minister of the United Kingdom and such of his colleagues as deal specially with Imperial affairs, of the Prime Minister of each of the Dominions, or some specially accredited alternate possessed of equal authority, and of a representative of the Indian people to be appointed by the Government of India. This proposal met with the cordial approval of the Overseas representatives, and we hope that the holding of an annual Imperial Cabinet to discuss foreign affairs and other aspects of Imperial policy will become an accepted convention of the British Constitution.

I ought to add that the institution in its present form is extremely elastic. It grew, not by design, but out of the necessities of the war. The essence of it is that the responsible heads of the Governments of the Empire, with those Ministers who are specially entrusted with the conduct of Imperial policy, should meet together at regular intervals to confer about foreign policy and matters connected therewith, and come to decisions in regard to them which, subject to the control of their own Parliaments, they will then severally execute. By this means they will be able to obtain full information about all aspects of Imperial affairs, and to determine by consultation together the policy of the Empire in its most vital aspects, without infringing in any degree the autonomy which its parts at present enjoy. To what constitutional developments this may lead we did not attempt to settle. The whole question of perfecting the mechanism for 'continuous consultation' about Imperial and foreign affairs between the 'autonomous nations of an Imperial Commonwealth' will be reserved for

the consideration of that special Conference which will be summoned as soon as possible after the war to readjust the constitutional relations of the Empire. We felt, however, that the experiment of constituting an Imperial Cabinet, in which India was represented, had been so fruitful in better understanding and in unity of purpose and action that it ought to be perpetuated, and we believe that this proposal will commend itself to the judgement of all the nations of the Empire.

### 3. THE IMPERIAL WAR CONFERENCES

#### *(a) Announcement by the Secretary of State for the Colonies*

*(British House of Commons Debates, April 14, 1915, pp. 16-17)*

*The Secretary of State for the Colonies* (Mr. HARCOURT): After war had broken out His Majesty's Government assumed that it would not be for the convenience of any of the parties that the normal (Imperial) Conference should meet on its due date, which was May of this year; but no communications on the matter passed between us and the Dominion Governments. Early in December last I was made aware privately that Mr. Fisher, the Prime Minister of the Commonwealth of Australia, was in favour of the meeting of the Imperial Conference during and in spite of the War. I communicated this fact, also privately, by telegraph to the Prime Ministers of all the other Dominions, and they unanimously agreed with us that the holding of a normal Conference this year during hostilities would be difficult, if not impossible. In two cases at least it was said that the attendance of Ministers was impracticable. I then informed the Prime Minister of the Commonwealth that in view of the practical unanimity of opinion, we hoped he would recognize its force, and he replied that he had no wish to press the matter. . . .

In all these communications I have referred only to what I have carefully called the normal Conference, by which I mean a full Conference with all the paraphernalia of miscellaneous resolutions, protracted sittings, shorthand reports, and resulting Blue Books. This is the sort of Conference which we thought unsuited to present conditions, but in January, when intimating its postponement to the various Dominions, I telegraphed to each of the Governors-General:

'Will you at the same time inform your Prime Minister that it is the intention of His Majesty's Government to consult him most fully and, if possible, personally, when the time arrives to discuss possible terms of peace.'

I need hardly add that His Majesty's Government intend to observe the spirit as well as the letter of this declaration, which I believe has given complete satisfaction to the Governments of the Dominions.

(b) *Report of the Imperial War Conference, 1917*  
(*Parliamentary Papers (Great Britain)*, 1917, Cd. 8566, pp. 4-5)

Resolution IV

*Naval Defence*

That the Admiralty be requested to work out immediately after the conclusion of the War what they consider the most effective scheme of Naval Defence for the Empire for the consideration of the several Governments summoned to this Conference, with such recommendations as the Admiralty consider necessary in that respect for the Empire's future security. . . .

Resolution VII

*Representation of India at future Imperial Conferences*

That the Imperial War Conference desires to place on record its view that the Resolution of the Imperial Conference of April 20, 1907, should be modified to permit of India being fully represented at all future Imperial Conferences, and that the necessary steps should be taken to secure the assent of the various Governments in order that the next Imperial Conference may be summoned and constituted accordingly. . . .

Resolution IX

*Constitution of the Empire*

The Imperial War Conference are of opinion that the readjustment of the constitutional relations of the component parts of the Empire is too important and intricate a subject to be dealt with during the War, and that it should form the subject of a special Imperial Conference to be summoned as soon as possible after the cessation of hostilities.

They deem it their duty, however, to place on record their view that any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine.

(c) *Report of the Imperial War Conference, 1918*  
*(Parliamentary Papers (Great Britain), 1918, Cd. 9177,*  
*pp. 6, 8, 165)*

## XV

### *Channels of Communication*

(1) That this Conference is of the opinion that the development which has taken place in the relations between the United Kingdom and the Dominions necessitates such a change in administrative arrangements and in the Channels of Communication between their Governments as will bring them more directly in touch with each other.

(2) That the Imperial War Cabinet be invited to give immediate consideration to the creation of suitable machinery for this purpose.

*Note:* After discussion at the Imperial War Cabinet, the following resolutions were passed on 30th July:

- I. (1) The Prime Ministers of the Dominions, as members of the Imperial War Cabinet, have the right of direct communication with the Prime Minister of the United Kingdom, and vice versa.
- (2) Such communications should be confined to questions of Cabinet importance. The Prime Ministers themselves are the judges of such questions.
- (3) Telegraphic communications between the Prime Ministers should, as a rule, be conducted through the Colonial Office machinery, but this will not exclude the adoption of more direct means of communication in exceptional circumstances.
- II. In order to secure continuity in the work of the Imperial War Cabinet, and a permanent means of consultation during the War on the more important questions of common interest, the Prime Minister of each Dominion has the right to nominate a Cabinet Minister, either as a resident or visitor in London, to represent him at meetings of the Imperial War Cabinet to be held regularly between the plenary sessions. . . .

## XXII

### *Imperial Court of Appeal*

The Conference is of opinion—

(1) That the question of replacing the present dual system of appeal by the constitution of one Imperial Court of Appeal demands the prompt consideration of His Majesty's Government.

(2) That the Lord Chancellor should be invited to prepare and circulate to the Governments of the Dominions and of India as soon as possible, a memorandum of such proposals as in the opinion of His Majesty's Government are practicable for that purpose with a view to decision at the next Imperial Conference.

(3) That each such Government as soon as possible thereafter shall communicate to the Government of the United Kingdom its views with regard to such proposals.

#### 4. MEMORANDUM OF THE DOMINION MINISTERS ON EMPIRE NAVAL DEFENCE, 1918

(*Canadian House of Commons Debates*, June 14, 1920, p. 3499)

(In response to a request by the Imperial War Conference of 1917 for a scheme of Empire naval defence,<sup>1</sup> the British Admiralty submitted a plan calling for 'a single navy under the control of an Imperial naval authority both in peace and war. Upon such Imperial naval authority the Dominions were to be represented, and there were to be local Naval Boards in each Dominion'. The Dominion Ministers (with the exception of the Prime Minister of Newfoundland, who was not present) thereupon passed the following memorandum. Cf. Borden, Sir R. L., *Canadian Constitutional Studies*, p. 102.)

The Dominion Ministers, having considered the Admiralty Memorandum of May 17, 1918, on the Naval Defence of the British Empire, which was circulated to the Imperial War Conference, 1918, submit the following conclusions and observations.

1. The proposals set forth in the Admiralty Memorandum for a single navy at all times under a central naval authority are not considered practicable.

2. Purely from the standpoint of naval strategy the reasons thus put forward for the establishment of a single navy for the Empire under a central naval authority are strong but not unanswerable. The experience gained in this war has shown that in time of war a Dominion Navy (e.g. that of Australia) can operate with the highest efficiency as part of a united navy under one direction and command established after the outbreak of war.

3. It is thoroughly recognized that the character of construction, armament, and equipment, and the methods and principles of training, administration, and organization, should proceed upon the same lines in all the navies of the Empire. This policy has already been followed in those Dominions which have established naval forces.

4. For this purpose the Dominions would welcome visits from a highly qualified representative of the Admiralty who, by reason of his ability and experience, would be thoroughly competent to advise the naval authorities of the Dominions in such matters.

5. As naval forces come to be developed upon a considerable scale by the Dominions it may be necessary hereafter to consider the establishment for war purposes of some supreme naval authority upon which each of the Dominions would be adequately represented.

<sup>1</sup> Cf. Resolution IV, *supra*, sub-section (3) (b), p. 175.

## B. THE PEACE CONFERENCE AND THE PEACE TREATY, 1918-20

## 1. CORRESPONDENCE AND DOCUMENTS RELATIVE TO THE REPRESENTATION OF THE DOMINIONS AT THE PEACE CONFERENCE

(*Canadian Sessional Papers*, 1919, 41J; pp. 1-10)

*Correspondence between the Prime Minister of Canada and the Prime Minister of the United Kingdom respecting the Representation of Canada at the Peace Conference, October 27, 1918, to November 3, 1918.*

Telegram from the Prime Minister of the United Kingdom to the Prime Minister of Canada.

London, October 27th, 1918.

SIR ROBERT BORDEN, Ottawa.

27th October, 1918. I think that you ought to be prepared to start without delay for Europe, if the Germans accept the terms of the armistice which we shall propose after our meeting at Versailles this week, as the Peace Conference will in that event probably open within a few weeks, and this will have to be preceded by inter-allied conferences of at least equal importance. It is, I think, very important that you should be here in order to participate in the deliberations which will determine the line to be taken at these conferences by the British delegates.

LLOYD GEORGE.

Telegram from the Prime Minister of Canada to the Prime Minister of the United Kingdom.

Ottawa, 29th October, 1918.

RT. HON. DAVID LLOYD GEORGE, 10 Downing Street, London.

October 29th. There is need of serious consideration as to representation of the Dominions in the peace negotiations. The press and people of this country take it for granted that Canada will be represented at the Peace Conference. I appreciate possible difficulties as to representation of the Dominions, but I hope you will keep in mind that certainly a very unfortunate impression would be created and possibly a dangerous feeling might be aroused if these difficulties are not overcome by some solution which will meet the national spirit of the Canadian people. We discussed the subject to-day in Council and I found among my colleagues a striking insistence which doubtless is indicative of the general opinion entertained in this country. In a word, they feel that new conditions must be met by new precedents. I should be glad to have your views.

BORDEN.

Telegram from the Prime Minister of the United Kingdom to the Prime Minister of Canada.

London, November 3, 1918.

SIR ROBERT BORDEN, Ottawa.

3rd November. Your telegram reached me while in Paris. I fully understand the importance of the question that you raise. It makes me impressed all the more with the importance of your coming immediately to Europe, for practically it is impossible to solve by correspondence the many difficult problems which it raises and which you fully appreciate. Also on many questions now coming under consideration I should value your advice greatly. It will, I earnestly hope, be possible for you to sail at once.

D. LLOYD GEORGE.

*Correspondence between the Acting Prime Minister in Ottawa and Sir Robert Borden in London respecting the Representation of Canada at the Peace Conference, December 4, 1918, to January 4, 1919.*

Telegram, dated December 4, 1918, from the Acting Prime Minister, Ottawa, to Sir Robert Borden, London.

Council to-day further considered Canadian representation at Peace Conference and is even more strongly of opinion than when you left, that Canada should be represented. Council is of opinion that in view of war efforts of Dominion other nations entitled to representation at Conference should recognize unique character of British Commonwealth composed of group of free nations under one sovereign and that provision should be made for special representation of these nations at Conference, even though it may be necessary that in any final decisions reached they should speak with one voice; that if this is not possible then you should form one of whatever delegation represents British Commonwealth. It surely is not contemplated that each nation at war should have exactly same numerical representation as Great Britain and France. Should not representation be to some extent commensurate with war efforts? Would you like Order in Council passed or any other official action taken declaring attitude of Government on question of Canadian representation at Conference? If so, please cable.

Telegram, dated London, January 2, 1919, from Sir Robert Borden to the Acting Prime Minister, Ottawa.

In Cabinet to-day I took up question of representation of the Dominion and spoke very frankly and firmly as to Canada's attitude. My proposal which I consider the most satisfactory solution that is practicable and which was accepted by the Cabinet is as follows:



First, Canada and the other Dominions shall each have the same representation as Belgium and other small allied nations at the Peace Conference.

Second, as it is proposed to admit representatives of Belgium and other small allied nations only when their special interests are under consideration, I urged that some of the representatives of British Empire should be drawn from a panel on which each Dominion Prime Minister shall have a place.

I pointed out that Canada has no special interest such as South Africa, Australia, and New Zealand, in respect of additional territory and that the basis of representation accorded to small allied nations would, therefore, be unsatisfactory from Canadian point of view. I emphasized the insistence of Canada on this recognition and I urged that the British Empire has the right to define the constitutional relations between the nations which compose it and their consequent right to distinctive representation. It is anticipated that British Empire will have five representatives entitled to be present at all meetings of Conference. I expressed my strong opinion that it would be most unfortunate if these were all selected from the British Islands. Probably three will be named and two others selected from the panel for each meeting. The panel will comprise both British and Dominion Ministers. No public announcement can be made until these proposals have been communicated to Allied Governments and accepted. I shall be glad to have views of Council. My proposal really gives to Dominions fuller representation than that accorded to small allied nations such as Belgium.

Telegram, dated Ottawa, January 4, 1919, from the Acting Prime Minister to Sir Robert Borden.

If Peace Conference in its composition is to express spirit of democracy for which we have been fighting, as Council thinks it should, small allied nations like Belgium which have fought with us throughout the war should be entitled to representation throughout whole Conference, even if limited to one member, and if this were agreed proposal that Canada should have same representation as Belgium, and other small allied nations, would be satisfactory, but not otherwise. Canada has had as many casualties as the United States and probably more actual deaths. Canadian people would not appreciate five American delegates throughout the whole Conference and no Canadian entitled to sit throughout Conference, nor would they appreciate several representatives from Great Britain and Canada none. There will be great disappointment here if you are not full member of Conference. We fully appreciate that you are doing everything in your power to secure suitable representation for Canada.

Telegram, dated Ottawa, January 16, 1919, from Acting Prime Minister to Sir Robert Borden (in Paris).

Announcement as to Canadian representation at Peace Conference most favourably received. Hearty congratulations on success of your efforts in this regard.

*Rules of the Conference, Annex II to Protocol No. 1 of the Preliminary Peace Conference, January 18, 1919*

Annex II

RULES OF THE CONFERENCE

I

The Conference summoned with a view to lay down the conditions of peace, in the first place by peace preliminaries and later by a definite Treaty of Peace shall include the representatives of the Allied or Associated belligerent Powers.

The belligerent Powers with general interests (the United States of America, the British Empire, France, Italy, Japan) shall attend all sessions and commissions.

The belligerent Powers with special interests (Belgium, Brazil, the British Dominions and India, China, Cuba, Greece, Guatemala, Hayti, the Hedjaz, Honduras, Liberia, Nicaragua, Panama, Poland, Portugal, Roumania, Serbia, Siam, the Czecho-Slovak Republic) shall attend the sessions at which questions concerning them are discussed.

Powers having broken off diplomatic relations with the enemy powers (Bolivia, Ecuador, Peru, Uruguay) shall attend sessions at which questions interesting them will be discussed.

Neutral Powers and States in process of formation shall, on being summoned by the Powers with general interests, be heard, either orally or in writing, at sessions devoted especially to the examination of questions in which they are directly concerned, and only in so far as those questions are concerned.

II

The Powers shall be represented by Plenipotentiary Delegates to the number of—

Five for the United States of America, the British Empire, France, Italy, Japan;

Three for Belgium, Brazil, Serbia;

Two for China, Greece, the Hedjaz, Poland, Portugal, Roumania, Siam, the Czecho-Slovak Republic;

One for Cuba, Guatemala, Hayti, Honduras, Liberia, Nicaragua, Panama;

One for Bolivia, Ecuador, Peru, Uruguay.

The British Dominions and India shall be represented as follows:  
Two Delegates each for Canada, Australia, South Africa, India  
(including the native States);  
One Delegate for New Zealand.

Each Delegation shall be entitled to set up a panel, but the number of Plenipotentiaries shall not exceed the figures given above.

The representatives of the Dominions (including Newfoundland), and of India can, moreover, be included in the representation of the British Empire by means of the panel system.

Montenegro shall be represented by one Delegate, but the manner of his appointment shall not be decided until the present political situation of that country becomes clear.

The conditions governing the representation of Russia shall be settled by the Conference when Russian affairs come up for discussion.

*British Empire Delegation.—The Dominions as Parties and Signatories to the Various Peace Treaties*

Memorandum circulated by Sir Robert Borden on behalf of the Dominion Prime Ministers.

(1) The Dominion Prime Ministers, after careful consideration, have reached the conclusion that all the treaties and conventions resulting from the Peace Conference should be so drafted as to enable the Dominions to become Parties and Signatories thereto. This procedure will give suitable recognition to the part played at the Peace Table by the British Commonwealth as a whole and will at the same time record the status attained there by the Dominions.

(2) The procedure is in consonance with the principles of constitutional government that obtain throughout the Empire. The Crown is the supreme executive in the United Kingdom and in all the Dominions, but it acts on the advice of different Ministries within different constitutional units; and under Resolution IX of the Imperial War Conference, 1917, the organization of the Empire is to be based upon equality of nationhood.

(3) Having regard to the high objects of the Peace Conference, it is also desirable that the settlements reached should be presented at once to the world in the character of universally accepted agreements, so far as this is consistent with the constitution of each State represented. This object would not be achieved if the practice heretofore followed of merely inserting in the body of the convention an express reservation providing for the adhesion of the Dominions were adopted in these treaties; and the Dominions would not wish to give even the appearance of weakening this character of the peace.

(4) On the constitutional point, it is assumed that each treaty or convention will include clauses providing for ratification similar to

those in the Hague Convention of 1907. Such clauses will, under the procedure proposed, have the effect of reserving to the Dominion Governments and legislatures the same power of review as is provided in the case of other contracting parties.

(5) It is conceived that this proposal can be carried out with but slight alterations of previous treaty forms. Thus:

(a) The usual recital of Heads of State in the Preamble needs no alteration whatever, since the Dominions are adequately included in the present formal description of the King, namely, 'His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India'.

(b) The recital in the Preamble of the names of the Plenipotentiaries appointed by the High Contracting Parties for the purpose of concluding the treaty would include the names of the Dominion Plenipotentiaries immediately after the names of the Plenipotentiaries appointed by the United Kingdom. Under the general heading 'The British Empire' the sub-headings 'the United Kingdom', 'The Dominion of Canada', 'The Commonwealth of Australia', 'the Union of South Africa', &c., would be used as headings to distinguish the various plenipotentiaries.

(c) It would then follow that the Dominion Plenipotentiaries would sign according to the same scheme.<sup>1</sup>

(6) The Dominion Prime Ministers consider, therefore, that it should be made an instruction to the British member of the Drafting Commission of the Peace Conference that all treaties should be drawn according to the above proposal.

Hotel la Pérouse, Paris.

12th March, 1919.

*Order in Council of April 10, 1919, authorizing Issuance of Full Powers to Canadian Plenipotentiary Delegates*

AT THE GOVERNMENT HOUSE AT OTTAWA

(P.C. 800)

Thursday, the 10th day of April, 1919.

*Present:*

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

His Excellency the Governor-General in Council, on a report from the Acting Secretary of State for External Affairs, stating that it is

<sup>1</sup> This was not strictly followed; the plenipotentiaries representing Great Britain signed for 'the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas', while the Canadian plenipotentiaries signed for Canada, the Australian for Australia, &c. The Conference of 1926, however, approved the procedure recommended above. Cf. *infra*, Section V, A. 3, pp. 338-40, 345-6.

expedient, in connexion with the Peace Congress, to invest fit persons with full powers to treat on the part of His Majesty the King in respect of the Dominion of Canada with persons similarly empowered on the part of other States, is pleased to order and doth hereby order that His Majesty the King be humbly moved to issue letters patent to each of the following named persons:

The Right Honourable Sir Robert Laird Borden, a member of His Majesty's Most Honourable Privy Council, G.C.M.G., K.C., M.P. and Prime Minister of the Dominion of Canada;

The Right Honourable Sir George Eulas Foster, a member of His Majesty's Most Honourable Privy Council, G.C.M.G., M.P., Minister of Trade and Commerce of the Dominion of Canada;

The Honourable Arthur Lewis Sifton, K.C., M.P., Minister of Customs and Inland Revenue of the Dominion of Canada;

The Honourable Charles Joseph Doherty, K.C., M.P., Minister of Justice of the Dominion of Canada;

naming and appointing him as Commissioner and Plenipotentiary in respect of the Dominion of Canada, with full power and authority as from the first day of January, 1919, to conclude with such plenipotentiaries as may be vested with similar power and authority on the part of any powers or states, any treaties, conventions or agreements in connexion with the said Peace Congress, and to sign for and in the name of His Majesty the King in respect of the Dominion of Canada everything so agreed upon and concluded and to transact all such other matters as may appertain thereto.

RODOLPHE BOUDREAU,  
*Clerk of the Privy Council.*

*Letter from Prime Minister of Canada to Prime Minister of United Kingdom, dated Paris, April 16, 1919, respecting Issuance of Full Powers to Canadian Plenipotentiary Delegates.*

(P.C. File No. 13)

British Delegation,  
Paris, April 16, 1919.

Dear Mr. LLOYD GEORGE,—I enclose a copy of a telegram which I sent on the 9th instant to the Acting Prime Minister at Ottawa, respecting the authority for the issuance of Full Powers to the Canadian Plenipotentiaries. We considered that Full Powers issued by the King should be based upon formal action by the Canadian Government; and accordingly the Order in Council proposed in the telegram has been passed.

A certified copy of the Order in Council will be sent from Ottawa to His Majesty's Government at London. When it reaches the Foreign Office some appropriate step should be taken to link it up with the Full Powers issued by the King to the Canadian plenipoten-

tiaries and with the papers connected therewith, in order that it may formally appear in the records that these Full Powers were issued on the responsibility of the Canadian Government.

Yours faithfully,

(Sgd.) R. L. BORDEN.

The Right Hon. D. LLOYD GEORGE, M.P.,  
Prime Minister and First Lord of the Treasury,  
British Delegation, Paris.

*Full Powers issued to Canadian Plenipotentiary*

(Sgd.) GEORGE R.I.

George, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India, &c., &c., &c. To all and singular to whom these Presents shall come, Greeting!

Whereas for the better treating of and arranging certain matters which are now in discussion, or which may come into discussion between Us and the Powers and States in connexion with the forthcoming Peace Congress,

We have judged it expedient to invest fit persons with full Power, to conduct the said discussion on Our Part in respect of Our Dominion of Canada: Know ye, therefore, that We, reposing especial Trust and Confidence in the Wisdom, Loyalty, Diligence, and Circumspection, of our Right Trusty and well-beloved Councillor Sir Robert Laird Borden, Knight Grand Cross of our Most Distinguished Order of St. Michael and St. George, one of our Counsel learned in the law, &c., &c., Member of the Parliament of Canada, Prime Minister of the Dominion of Canada, have named, made, constituted and appointed, as We do by these Presents name, make, constitute and appoint him, Our Undoubted Commissioner, Procurator, and Plenipotentiary, in respect of Our Dominion of Canada; Giving to him all manner of Power and Authority to treat, adjust and conclude with such Ministers, Commissioners, or Plenipotentiaries, as may be vested with similar Power and Authority on the part of any Powers or States as aforesaid, any Treaties, Conventions, or Agreements that may tend to the attainment of the above-mentioned end, and to sign for Us and in Our Name in respect of Our Dominion of Canada everything so agreed upon and concluded, and to do and transact all such other matters as may appertain thereto, in as ample manner and form, and with equal force and efficacy as We Ourselves could do, if personally present,

Engaging and Promising, upon Our Royal Word, that whatever things shall be so transacted and concluded by Our said Commissioner, Procurator, and Plenipotentiary in respect of Our Dominion of Canada, shall, subject if necessary to Our Approval and Ratification,

be agreed to, acknowledged and accepted by Us in the fullest manner, and that We will never suffer either in the whole or in part any person whatsoever to infringe the same, or act contrary thereto, as far as it lies in Our Power.

In witness whereof We have caused the Great Seal of Our United Kingdom of Great Britain and Ireland to be affixed to these Presents, which We have signed with Our Royal Hand.

Given at Our Court of St. James, the first day of January, in the Year of Our Lord, One thousand Nine Hundred and Nineteen and in the Ninth Year of Our Reign.

(2) CORRESPONDENCE BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF THE UNITED KINGDOM RESPECTING THE RATIFICATION OF THE TREATY OF PEACE WITH GERMANY, JULY 4, 1919, TO SEPTEMBER 19, 1919

(*Canadian Sessional Papers*, 1919, 41 J, pp. 10-13)

Telegram from the Secretary of State for the Colonies to the Governor-General.

London, July 4th 1919.

It is hoped German treaty may be ratified by three of the Principal Allied and Associated Powers and by Germany before end of July.

Telegram from the Governor-General to the Secretary of State for the Colonies.

Ottawa, July 9th, 1919.

Following from Prime Minister. Your message July 4th respecting ratification of Peace Treaty with Germany. I am under pledge to submit the Treaty to Parliament before ratification on behalf of Canada. No copy of Treaty has yet arrived and Parliament has been prorogued. Kindly advise how you expect to accomplish ratification on behalf of whole Empire before end July.

Telegram from the Secretary of State for the Colonies to the Governor-General.

London, July 23, 1919.

Following for your Prime Minister, Begins:

I have now consulted with Prime Minister and the Cabinet with reference to your most secret telegram of July 9. Our view is that early ratification, especially now that Germany has ratified, is of the highest importance. In the British constitution there is nothing which makes it necessary for the King to obtain the consent of Parliament before ratifying Treaty. With perfect constitutional propriety the King can ratify on the advice of his Ministers. For a treaty of this far-reaching importance, and one embracing the whole Empire, the King certainly ought only to act at the instance of all his constitu-

tional advisers—the Dominion Ministries as well as that of the United Kingdom. But inasmuch as Dominion Ministers participated in peace negotiations, and side by side with Ministers of the United Kingdom signed preliminaries of treaty, we hold that His Majesty if he now ratified the Treaty for the whole Empire would have the same constitutional justification in doing so in respect of Dominions as he has in respect of the United Kingdom. The King by a single act would bind the whole Empire, as it is right that he should, but that act would represent the considered judgement of his constitutional advisers in all self-governing States of the Empire, because it would be merely giving effect to an international pact which they had all agreed to.

We realize at the same time the difficulty in which you are placed by your pledge to Parliament. We are willing, in order to meet this difficulty, to delay ratification (which if we alone were concerned we should desire to effect immediately) as long as we possibly can in order to give you time to lay treaty before your Parliament. The question is how long will this take? At an early date could you not have a special meeting of Parliament, solely for the submission of the Treaty, and if so how soon might this approval be expected? It would be impossible in our opinion without the gravest consequence to delay ratification until the late autumn.

I am communicating with the Governments of South Africa, New Zealand and Australia explaining urgency, and begging them to submit treaty to their Parliaments without delay, if they feel bound to do so before assenting to its ratification. Ends.

(Sgd.) MILNER.

Telegram from the Governor-General to the Secretary of State  
for the Colonies.

Ottawa, July 29, 1919.

Following from my Prime Minister. Begins: Your secret telegram of July 23 has been carefully considered by Cabinet, and it seems to us that there is considerable doubt whether under modern constitutional practice the King should ratify without first obtaining the approval of Parliament. We think that in accordance with recent practice and authorities such approval should be obtained in the case of treaties imposing any burden on the people, or involving any change in the law of the land, or requiring legislative action to make them effective or affecting the free exercise of the legislative power, or affecting territorial rights.

On the other point we fully agree that the King in ratifying the treaty ought only to act at the instance of all his constitutional advisers throughout the Empire but we do not entirely understand the suggestion that in the case of the Dominions the signature of the Dominion plenipotentiaries is equivalent to the tendering of advice



to ratify. Do you regard this as holding good in the case of the signature of United Kingdom plenipotentiaries?

We propose to call special session on September 4 for purpose of presenting treaty to Parliament, and I am confident we can ratify within a week thereafter. Please cable whether this meets your views.

Telegram from the Governor-General to the Secretary of State  
for the Colonies.

Ottawa, August 1, 1919.

Following from my Prime Minister. Begins. As we have to give thirty days' notice of summoning Parliament I hope we have immediate reply to my telegram of July 29 respecting ratification of Peace Treaty. Ends.

Telegram from the Secretary of State for the Colonies to the  
Governor-General.

London, 2nd August, 1919.

Summoning of Parliament. I strongly advise your giving notice to summon immediately. In view of severe pressure being put upon us from Paris to ratify at earliest possible date, it is impossible to promise that we shall be able to keep back ratification till the eleventh of September. But I will certainly do my best, and I feel pretty confident that the argument for that amount of delay would be irresistible if we could count on Canadian approval by that date.

(Signed) MILNER.

Telegram from the Governor-General to the Secretary of State  
for the Colonies.

Ottawa, August 4, 1919.

Following message from Prime Minister for you. Your message reached me yesterday afternoon and this morning Parliament has been summoned for Monday, 1st September. I cannot emphasize too strongly the unfortunate results which would certainly ensue from ratification before Canadian Parliament has had an opportunity of considering Treaty.

Telegram from the Secretary of State for the Colonies to the  
Governor-General.

Urgent.

London, August 12, 1919.

Re your cypher telegram of August 4. The Government of Union of South Africa has convened special Session of Parliament to consider Peace Treaty with Germany. They are of opinion that it will be very desirable to secure uniformity in dealing with this question, and have asked me to submit suggestions as to form in which Peace Treaty should receive in Dominions Parliamentary approval, that is, whether motion should be submitted to Parliament for that purpose,

or whether approval should take form of Bill on lines of that submitted to Parliament here. I have answered to the effect that matter is, of course, one for decision of local Government, but that best course, in my opinion, would be to obtain approval of Treaty by Resolution of both Houses and that if, as is probable, legislation on lines of British Bill is required in order to give effect to Treaty, this could follow later.

British Bill, it is important to bear in mind, is not a Bill to ratify Treaty, but to empower the Government to take necessary steps to carry out those provisions of Treaty which require legislative authority.

Paris is putting severe pressure upon us to ratify at the earliest possible date, and ratification by the French expected September 2nd or 3rd.

I should be grateful if you will inform me what procedure will be adopted by your Government. My reason for suggesting Resolution of both Houses is that this procedure might enable ratification to take place without the delay that might be involved in obtaining parliamentary powers for carrying out Treaty.

If, as I hope, procedure by resolution will be adopted, I assume that on receiving cable to the effect that such resolution has been passed, there will be no objection to His Majesty immediately ratifying.

Other Dominions I have telegraphed in the same sense.

(Sgd.) MILNER.

Telegram from the Governor-General to the Secretary of State  
for the Colonies.

Ottawa, August 23, 1919.

Your telegram of August 12 respecting parliamentary approval of Treaty of Peace with Germany. Canadian Government propose to proceed by way of resolution of both Houses in order to expedite the matter. Legislation giving effect to the Treaty will be introduced later.

Telegram from the Governor-General to the Secretary of State  
for the Colonies.

Ottawa, 12th September, 1919.

Most urgent.

Following Order in Council approved to-day. Begins:

At the GOVERNMENT HOUSE AT OTTAWA,

12th September, 1919.

*Present:*

THE GOVERNOR-GENERAL IN COUNCIL

WHEREAS, at Versailles, on the twenty-eighth day of June, nineteen hundred and nineteen, a Treaty of Peace (including a protocol annexed thereto between the Allied and Associated Powers and Germany) was concluded and signed on behalf of His Majesty, for

and in respect of the Dominion of Canada, by plenipotentiaries duly authorized for that purpose by His Majesty on the advice and recommendation of the Government of the Dominion of Canada;

AND WHEREAS the Senate and House of Commons of the Dominion of Canada have by resolution approved of the said Treaty of Peace;

AND WHEREAS it is expedient that the said Treaty of Peace be ratified by His Majesty for and in respect of the Dominion of Canada;

Now, therefore, the Governor-General in Council, on the recommendation of the Secretary of State for External Affairs, is pleased to order and doth hereby order that His Majesty the King be humbly moved to approve, accept, confirm and ratify the said Treaty of Peace, for and in respect of the Dominion of Canada. Ends.

(Sgd.) DEVONSHIRE.

Telegram from the Secretary of State for the Colonies to the Governor-General.

London, September 19, 1919.

Most satisfactory to know that Treaty of Peace with Germany has been approved by Canadian Parliament. As matters have turned out and owing to unforeseen delays on the part of other powers, British Empire will probably be in position to ratify as soon as any other two of the principal Allied and Associated Powers. Parliaments of the Union of South Africa and New Zealand have also approved, and I hope soon to receive telegram announcing that Australian Parliament has approved.

(Sgd.) MILNER.

### 3. SPEECH OF SIR ROBERT BORDEN ON THE TREATY OF PEACE WITH GERMANY

(*Canadian House of Commons Debates*, September 2, 1919, pp. 13-22)

Rt. Hon. Sir ROBERT BORDEN (Prime Minister): I beg to move the following resolution:

Resolved, that it is expedient that Parliament do approve of the Treaty of Peace between the Allied and Associated Powers and Germany (and the Protocol annexed thereto), which was signed at Versailles on the twenty-eighth day of June, nineteen hundred and nineteen, a copy of which has been laid before Parliament, and which was signed on behalf of His Majesty, acting for Canada, by the plenipotentiaries therein named, and that this House do approve of the same.

. . . Whatever doubt may exist in other cases, it is unquestionable that this Treaty should be submitted to Parliament for its consideration and approval before ratification on behalf of Canada takes place. The formal ratification is of course in the name of the Sovereign; but in giving that ratification on behalf of Canada, His Majesty necessarily acts at the instance of his constitutional advisers in this country.

We gave our pledge to submit this Treaty to Parliament before ratification, and that pledge is now fulfilled. . . .

I now come to consider the character of the representation secured by Canada at the Conference, her position as a signatory of the Treaties concluded there, and her status as a member of the League of Nations and of the International Labour Convention. Early in the war it had been announced in the various Parliaments of the Empire that the Dominions would be fully consulted concerning the terms of peace. The sessions of the Imperial War Cabinet held in the spring of 1917 and in the summer of 1918 afforded in a certain measure the means for the carrying out of this understanding. . . .

Shortly before the armistice the Prime Minister of the United Kingdom strongly urged that I should arrive in London as soon as possible and with three of my colleagues I left Ottawa on the 8th November last. The status of the Dominions at the Peace Conference came immediately into question and was the subject of earnest discussion. Various methods, which it is not necessary to explain, were suggested. In the end I proposed that there should be a distinctive representation for each Dominion similar to that accorded to the smaller Allied powers, and in addition that the British Empire representation of five delegates should be selected from day to day from a panel made up of representatives of the United Kingdom and the Dominions. This proposal was adopted by the Imperial War Cabinet. Early in December preliminary conversations on the making of peace took place in London between representatives of the British Empire, of France and of Italy, and the proposal which I had already put forward was accepted in principle. The Preliminary Peace Conference began at Paris on January 12, 1919, and the question of procedure, including that of representation, was immediately taken up by the representatives of the principal Allied and Associated Powers, afterwards commonly known as the Council of Ten. At first strong objection was made to the proposed representation of the British Dominions. Subsequently there was a full discussion in the British Empire delegation, at which a firm protest was made against any recession from the proposal adopted in London. In the end that proposal was accepted.

The adoption of the panel system gave to the Dominions a peculiarly effective position. At plenary sessions there were sometimes three Canadian plenipotentiary delegates, two as representatives of Canada and one as representative of the Empire. Moreover, throughout the proceedings of the Conference the Dominion delegates, as members of the British Empire delegation, were thoroughly in touch with all the proceedings of the Conference and had access to all the papers recording its proceedings. This enabled them effectively to watch and check those proceedings in the interest of their respective Dominions and placed them in a position of decided

advantage. Dominion ministers were nominated to and acted for the British Empire on the principal Allied commissions appointed by the Conference from time to time to consider and report upon special aspects of the conditions of peace. The Canadian ministers acted as the principal representatives of the British Empire on these commissions as follows:

Commission on Greek Questions, Sir Robert Borden (Vice-Chairman).  
Economic Commission, Sir George Foster (Vice-President).

Commission on the International Control of Ports, Waterways, and Railways, Hon. A. L. Sifton (Vice-President).

Sub-Commission on Pre-War Contracts, Hon. C. J. Doherty (Chairman).

Supreme Economic Council, Sir George Foster, with Mr. Sifton and Mr. Doherty as alternates, was on the panel from which the British Empire representation was chosen from time to time.

On several occasions I was charged with the duty of attending as one of the British Empire representatives on the Council of Five. Mr. Lloyd George called upon me to put forward before the Council of Four the British Empire case in respect of the clauses on economic questions, on the International Control of Ports, Waterways and Railways and on Submarine Cables. During the last month of my stay in Paris I acted regularly as Chairman of the British Empire delegations in the absence of the Prime Minister of the United Kingdom, whose duties as a member of the Council of Four constantly prevented his attendance.

It is desirable to note an important development in constitutional practice respecting the signature of the various Treaties concluded at the Conference. Hitherto it has been the practice to insert an article or reservation providing for the adhesion of the Dominions. In view of the new position that had been secured and of the part played by the Dominion representatives at the peace table we thought this method inappropriate and undesirable in connexion with the Peace Treaty. Accordingly I proposed that the assent of the King as High Contracting Party to the various Treaties should in respect of the Dominions be signified by the signature of the Dominion plenipotentiaries, and that the preamble and other formal parts of the Treaties should be drafted accordingly. This proposal was adopted in the form of a memorandum by all the Dominion Prime Ministers at a meeting which I summoned, and was put forward by me on their behalf to the British Empire delegation, by whom it was accepted. The proposal was subsequently adopted by the Conference and the various Treaties have been drawn up accordingly so that the Dominions appear therein as signatories, and their concurrence in the Treaties is thus given in the same manner as that of other nations.

This important constitutional development involved the issuance by the King, as High Contracting Party, of Full Powers to the various Dominion Plenipotentiary Delegates. In order that such powers

issued to the Canadian Plenipotentiaries might be based upon formal action of the Canadian Government, an Order in Council was passed on April 10, 1919, granting the necessary authority. Accordingly I addressed a communication to the Prime Minister of the United Kingdom requesting that necessary and appropriate steps should be taken to establish the connexion between this Order in Council and the issuance of the Full Powers by His Majesty so that it might formally appear of record that they were issued on the responsibility of the Government of Canada.

The new and definite status of the Dominions at the Peace Conference is further manifested in the constitution of the League of Nations. Since they had enjoyed the same status at the Peace Conference as that of minor powers, we took the ground that the Dominions should be similarly accepted in the future international relationship contemplated by the League. The League of Nations Commission, while inclined to accept this in principle, did not at the outset accept all its implications as was apparent in the first draft of the Covenant. This document, however, was professedly tentative. The Dominions' case was pressed, and in the final form as amended and incorporated in the Treaty of Peace with Germany, the status of the Dominions as to membership and representation in the Assembly and Council was fully recognized. They are to become members as signatories of the Treaty, and the terms of the document make no distinction between them and other signatory members. An official statement as to the true intent and meaning of the provisions of the Covenant in that regard was secured by me and is of record in the Archives of the Peace Conference.

A similar question arose in respect of the constitution of the International Labour Organization. Corresponding to the Council of the League there is a Labour Governing Body consisting of delegates nominated by a limited number of governments. The original form of the Labour Convention did not adequately recognize the status of the Dominions and at the Plenary Session of April 11, 1919, when a resolution was proposed that the Peace Conference approve of the Draft Convention, I moved that the resolution be amended by adding a provision which authorized the Drafting Committee to make such amendments as were necessary to have the Convention conform to the League of Nations in the character of its membership and in the method of adherence. As a result the Labour Convention was finally amended so that the Dominions were placed on the same footing as other members of the International Labour Organization, becoming eligible like others for selection to nominate their Government Delegates to the Governing Body.

I hope the House will realize that the recognition and status accorded to the British Dominions at the Peace Conference were not won without constant effort and firm insistence. In all these efforts

the Dominions had the strong and unwavering support of the British Prime Minister and his colleagues. The constitutional structure of the British Empire is imperfectly understood by other nations, even by a nation so closely allied in kinship, in language, and in the character of its institutions as the United States of America. Such lack of comprehension need excite no surprise because the association between the Mother Country and the great self-governing Dominions has been for years in a condition of development and that development is not yet complete. The future relationship of the nations of the Empire must be determined in accordance with the will of the Mother Country and of each Dominion in a constitutional conference to be summoned in the not distant future. Undoubtedly it will be based upon equality of nationhood. Each nation must preserve unimpaired its absolute autonomy, but it must likewise have its voice as to those external relations which involve the issue of peace or of war. So that the Britannic Commonwealth is in itself a community or league of nations which may serve as an exemplar to that world-wide League of Nations which was founded in Paris on the 28th of last June. On behalf of my country I stood firmly upon this solid ground; that in this, the greatest of all wars, in which the world's liberty, the world's justice, in short the world's future destiny were at stake, Canada had led the democracies of both the American continents. Her resolve had given inspiration, her sacrifices had been conspicuous, her effort was unabated to the end. The same indomitable spirit which made her capable of that effort and sacrifice made her equally incapable of accepting at the Peace Conference, in the League of Nations, or elsewhere, a status inferior to that accorded to nations less advanced in their development, less amply endowed in wealth, resources, and population, no more complete in their sovereignty and far less conspicuous in their sacrifice.

I commend this Treaty to the consideration and approval of the Canadian Parliament, claiming not indeed that it has no imperfections, but that it does in truth embody terms consistent with honour and justice and that the most earnest endeavour of those who framed it was to ensure the future peace of the world.

#### 4. SPEECH OF THE RIGHT HON. W. M. HUGHES ON THE TREATY OF PEACE WITH GERMANY

*(Australian House of Representatives Debates, September 10, 1919,  
pp. 12163-77)*

Rt. Hon. W. M. HUGHES (Prime Minister): I desire, by leave, to move—

That this House approves of the Treaty of Peace between the Allied and Associated Powers and Germany, signed at Versailles on the 28th June, 1919.

. . . It is impossible to understand this Treaty without some preliminary remarks about the Armistice which preceded it. In October the Germans, being then, indeed, in desperate straits, appealed to President Wilson to intervene and use his influence with the Allies to make peace upon the basis of his fourteen points. . . . This the President communicated to the Allies, who met in the Council Chamber at Versailles on, I think, 29th October, to consider the position as it then stood. . . .

Honourable members know that the Allies accepted the fourteen points, and the world was very much astonished to learn, and at first did not believe, that by the Allied Note, issued from Versailles on the 5th November, there had been settled, not only the terms of the Armistice, but really the terms of the peace. . . . I have always held that that was an error—of judgement, if you like—for by these fourteen points adopted as the basis of Peace, none of those things for which Australia had fought was guaranteed, and, as is well known to the people of Australia, I took the earliest possible opportunity of making a strong and emphatic protest against what had been done. . . .

I did not claim that the representatives of the Dominions should have been summoned to Versailles. Nothing was further from our thoughts. The settlement of the terms of the Armistice was a military matter, with which I was totally unfitted to deal, as, indeed, were all the representatives of the Dominions. But in regard to the terms of Peace, the Dominions had been assured—nay, every one of them had a right to expect, apart from any assurance—that they would be consulted before those terms were settled. We were not consulted, and, speaking in London on, I think, the day following the issue of the Allied Note, I said—

We went into this war to fight for liberty and the rights of small nations. We are a small nation, conscious of our national spirit, and jealous of our rights and liberties. Germany threatened our territorial integrity and our political liberty. We, along with the Allies, have won, after four years of fearful sacrifice, a decisive victory. We have a right to demand a victorious peace. We have a right to demand that in the terms of Peace our territorial integrity shall be guaranteed, that those islands, which are the gateways to our citadel, shall be vested in us, not because we want territory, but because we desire safety. . . The terms of Peace do not guarantee that this shall be done.

Before the war we had the right to make what laws we pleased. These Peace terms seem to imperil, or, at best, impair, that right. We claim the right, and shall insist upon it, to make what tariff distinctions we like; and we feel sure that in this demand we shall have, not only the support of the people of Britain, but that of America, that great Republic, the foundations of whose greatness rest upon their War of Independence, waged to establish this very right. And, lastly, we claim that indemnities shall be exacted from Germany, who plunged the whole world into bloody war.

Victory is ours—complete and overwhelming. We have fought for



liberty, for right, and national safety; yet in the terms of Peace these rights and ideals are not safeguarded. All is vague and uncertain, where it should be clear and definite.

Australia stands, after four years of dreadful war, her interests not guaranteed, her rights of self-government menaced, and with no provision made for indemnities. That is the position, and it can hardly be regarded as satisfactory. . . .

It was abundantly evident to my colleague and to myself, as well as to the representatives of other Dominions, that Australia must have separate representation at the Peace Conference. Consider the vastness of the Empire, and the diversity of interests represented. Look at it geographically, industrially, politically, or how you will, and it will be seen that no one can speak for Australia but those who speak as representatives of Australia herself. Great Britain could not, in the very nature of things, speak for us. Britain has very many interests to consider besides ours, and some of those interests do not always coincide with ours. It was necessary, therefore—and the same applies to other Dominions—that we should be represented. Not as at first suggested, in a British panel, where we would take our place in rotation, but with separate representation like other belligerent nations. Separate and direct representation was at length conceded to Australia and to every other self-governing Dominion. . . .

Let me come directly to the position of Australia. What have we got out of the war? I have endeavoured, although it was not necessary—because honourable members know for themselves—to show what Australia has done in the War. We went into this conflict for our own national safety, in order to ensure our national integrity, which was in dire peril, to safeguard our liberties, and those free institutions of government which, whatever may be our political opinions, are essential to our national life, and to maintain those ideals which we have nailed to the very topmast of our flagpole—White Australia, and those other aspirations of this young Democracy. We asked for these things. Australia has incurred a huge burden of debt through no fault of her own, for we were guiltless of the shedding of blood in this campaign; we did not provoke the War—whoever is guilty, we were not. In regard to this huge burden of debt of £350,000,000 under which this young community must stagger, it was right that we should also demand that Germany should pay for what the war has cost Australia.

Now what have we got? In speaking on this point, let me first refer to our national safety. In order that Australia shall be safe, it is necessary that the great rampart of islands stretching around the north-east of Australia should be held by us or by some Power in whom we have absolute confidence. When the Armistice terms were decided on the 5th November, I protested because our national safety was not guaranteed, inasmuch as there was no assurance that the

possession of these islands would be vested in us, and afterwards, when we went to the Conference, we sought to impress on the Council of Ten the position as we saw it, and fought for this guarantee of our national safety. One of the most striking features of the Conference was the appalling ignorance of every nation as to the affairs of every other nation, its geographical, racial, and historical conditions or traditions. It was difficult to make the Council of Ten realize how utterly the safety of Australia depended upon the possession of these islands. Perhaps there are very few Australians who realize that New Guinea is greater in size than Cuba, the Philippines, and Japan, except Sakhalin, all rolled into one, that it is only 80 miles from our northern shore, and that those who hold it hold us. Recollect that our coast line is so vast that to circumnavigate Australia is a voyage as great as from here to England, and no 5,000,000 people can possibly hold this continent when, 80 miles off, there is a potential enemy. Well stretched out from New Guinea there are New Ireland and New Britain. There are literally hundreds of other islands stretching out and out, every one of them a point of vantage from which Australia could be attacked. The possession of those islands was necessary, therefore, for our safety. We sought to obtain direct control of them, but President Wilson's fourteen points forbade it; and, after a long fight, the principle of the mandate was accepted. Then the nature of the contest changed, and, since the mandate principle was forced upon us, we had to see that the form of the mandate was consistent, not only with our national safety, but with our economic, industrial, and general welfare.

Two principles arose here, to which I may direct attention. One was the open door. It was sought to couple this mandate with the condition of an open door for men and for goods. It is undesirable, for many reasons, to dwell very long on that point; but I ask my fellow citizens throughout Australia to realize what an open door for men and goods into those islands would mean. Our control of trade and navigation would be gone, and within 80 miles of us there would come pouring in those who, when the hour should strike, could pounce on us on the mainland. We fought against the open door, and the mandate was at length obtained in the form in which it now stands, which substantially is this: We have the same rights to make laws over the islands as over the mainland; indeed, the Commonwealth has wider powers there to make laws, because its jurisdiction on the mainland is limited. As a matter of actual fact, we may make over the islands exactly the same kind of laws as a State could make before Federation in Australia, subject only to five reservations. There can be no sale of firearms to the natives; we cannot raise native armies except for the mere defence of that territory; we cannot sell alcohol to the natives; we cannot raise fortifications; and there cannot be any slave trade. Those, of course, were conditions so entirely

acceptable to us that they were not limitations at all on the sovereign power which was necessary for our salvation. That mandate is now embodied in the covenant. . . .

The next point we had to deal with was the White Australia policy. Honourable members who have travelled in the East or in Europe will be able to understand with what difficulty this world assemblage of men, gathered from all the corners of the earth—men representing 400,000,000 Chinese, men representing Japan, men representing India, Siam, Hayti, and Liberia; men representing partially coloured populations—were able to appreciate this ideal of those 5,000,000 people who had dared to say, not only that this great continent was theirs, but that none should enter in except such as they chose. I venture to say, therefore, that perhaps the greatest thing which we have achieved, under such circumstances and in such an assemblage, is the policy of a white Australia. . . .

I desire to indicate to the House some of the difficulties which confronted us in our struggle. The Japanese delegation moved an amendment to the Covenant of the League of Nations as follows:

The equality of nations being a basic principle of the League of Nations, the high contracting parties agree to accord as soon as possible to all alien nationals of States members of the League, equal and just treatment in every respect, making no distinction, either in law or in fact, on account of their race or nationality.

I think I am entitled to tell the House something of the story of the struggle for the White Australia. That amendment was put forward in a dozen different ways. It was modified again and again. It came now directly from the quarter I have mentioned, and again indirectly from other quarters. Pressure was brought in this and in that direction. One modification suggested was that it should only apply to alien nationals resident in this country. I said then, and I knew I spoke for Australia, that no matter how much the amendment was altered, no matter what words were used, I would not accept it. . . .

We are not to be regarded as unfriendly to Japan, or as looking down upon the Japanese people when we say: 'Your ideals, your institutions, your standards, are not ours. We do not say that ours are greater or better than yours; we only say they are different. Our paths lie in different directions. Our destiny beckons us, and we must tread the road along which we are led by the impulses and instincts which come from our history and our race.' That is the position of Australia towards Japan. We hope that not only with Japan, but with all nations, we shall remain for ever on terms of the most perfect friendship. We claim the right, however, to say in regard to Australia who shall enter and who shall not. This is our house. To keep it ours, our soldiers have sacrificed their blood, and they have placed the keys in our hands. The war was waged for

liberty. We had this right before the War, and we claim to retain it now.

I pass on to the question of reparation. I was Chairman of the British Reparation Committee, and Vice-Chairman of the Allied Reparation Commission. . . . I always took the view that Germany should pay. She had wrought this havoc, and it was for us to present the bill: 'This is the damage you have done, and, so far as it can be measured in money, this is what you have to pay. . . .'

The Reparation Commission, when it met in Paris, proceeded to consider this matter, and the American delegation took the view—a view, mark you, that I had foreshadowed on 7th November, 1918—that by the acceptance of President Wilson's fourteen points, the Allies had renounced all claim for the general cost of the War, and could ask for no more than compensation for damages to persons and property of civilians, and damage caused by special acts and outrages contrary to international law. . . . Ultimately the Reparation Commission made its report, with a comprehensive reservation by the American delegation.

The Council of Four, as it was then, did not accept the Reparation Commission's report; but itself drew up a scheme, which is embodied in the Peace Treaty. In Article 232 of that document it is shortly set out that Germany is not asked to pay anything beyond civilian reparation excepting for damages in categories set out in Annex I, and in that annex the general costs of the War are omitted.

### C. THE FORMATION OF THE LEAGUE OF NATIONS, 1919

#### I. THE COVENANT OF THE LEAGUE OF NATIONS

(Temperley, H. W. V., *A History of the Peace Conference of Paris*, iii, pp. 111-23)

##### Article I

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant. Such accession shall be effected by a declaration deposited with the Secretariat within two months of the coming into force of the Covenant. Notice thereof shall be sent to all other Members of the League.

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments.

Any member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.

## Article II

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat.

## Article III

The Assembly shall consist of Representatives of the Members of the League.

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon.

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives.

## Article IV

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League. These four Members of the League shall be selected by the Assembly from time to time in its discretion. Until the appointment of the Representatives of the four Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council.

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council; the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council.

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon.

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world.

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League.

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative. . . .

## Article X

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled. . . .

## ANNEX

*I. Original Members of the League of Nations Signatories of the Treaty of Peace*

United States of America	Haiti
Belgium	Hedjaz
Bolivia	Honduras
Brazil	Italy
British Empire	Japan
Canada	Liberia
Australia	Nicaragua
South Africa	Panama
New Zealand	Peru
India	Poland
China	Portugal
Cuba	Roumania
Ecuador	Serb-Croat-Slovene State
France	Siam
Greece	Czecho-Slovakia
Guatemala	Uruguay

2. DECLARATION RESPECTING INTERPRETATION OF ARTICLE IV OF  
THE COVENANT OF THE LEAGUE OF NATIONS

(*Canadian House of Commons Debates*, September 8, 1919, p. 85)

The question having been raised as to the meaning of Article IV of the League of Nations Covenant, we have been requested by Sir Robert Borden to state whether we concur in his view, that upon the true construction of the first and second paragraphs of that Article, representatives of the self-governing Dominions of the British Empire may be selected or named as members of the Council. We have no hesitation in expressing our entire concurrence in this view. If there were any doubt it would be entirely removed by the fact that the Articles of the Covenant are not subject to a narrow or technical construction.

Dated at the Quai d'Orsay, Paris, the sixth day of May, 1919.

(Signed) G. Clemenceau.

Woodrow Wilson.

D. Lloyd George.

D. THE DECISION TO APPOINT A CANADIAN MINISTER TO  
THE UNITED STATES, 1920

(Announcement by the British Government, *British House of Commons Debates*, May 10, 1920, pp. 205-6)

Mr. BONAR LAW: I may explain to the House that the reason I am making this statement now instead of at Question time is that we desire that the announcement should be made simultaneously in the British and Canadian Houses of Commons.

As a result of recent discussions, an arrangement has been concluded between the British and Canadian Governments to provide more complete representation at Washington of Canadian interests than has hitherto existed. Accordingly it has been agreed that His Majesty, on the advice of his Canadian Ministers, shall appoint a Minister Plenipotentiary, who will have charge of Canadian affairs, and will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instruction from, and reporting direct to, the Canadian Government. In the absence of the Ambassador, the Canadian Minister will take charge of the whole Embassy and of representation of Imperial, as well as Canadian, interests. He will be accredited by His Majesty to the President with necessary powers for the purpose.

This new arrangement will not denote any departure, either on the part of the British Government or of the Canadian Government, from the principle of diplomatic unity of the British Empire.

Need for this important step has been fully realized by both Governments for some time. For a good many years there has been direct communication between Washington and Ottawa, but the constantly increasing importance of Canadian interests in the United States had made it apparent that Canada should be represented there in some distinctive manner, for this would doubtless tend to expedite negotiations, and naturally first-hand acquaintance with Canadian conditions would promote good understanding. In view of the peculiarly close relations that have always existed between the people of Canada and those of the United States, it is confidently expected as well that this new step will have the very desirable result of maintaining and strengthening friendly relations and co-operation between the British Empire and the United States.<sup>1</sup>

<sup>1</sup> Cf. also, *infra*, Section IV, I, pp. 314-15.

### SECTION III

## THE PERIOD OF TENTATIVE CENTRALIZATION

1920-2

#### A. THE CONFERENCE OF PRIME MINISTERS, 1921

##### I. THE IMPERIAL PEACE CABINET

(*The London Times*, November 18, 19, 1920)

*November 18.* The meeting of the Dominion Prime Ministers in June next will mark the beginning of a definite system of Empire Government in peace by an Imperial Peace Cabinet.

The Imperial Peace Cabinet is to be the direct successor, both in its composition and in its functions, of the Imperial War Cabinet which was summoned by Mr. Lloyd George when he first became Prime Minister at the end of 1916. This Imperial War Cabinet was an executive body which took definite decisions about Imperial matters in war-time. It differed from the old Imperial Conference in this way. The old Imperial Conference was merely a consultative body giving advice to the various Governments of the Empire.

The Imperial War Cabinet was the actual governing body for the whole Empire during the war. The new Imperial Peace Cabinet will also be a governing body for the Empire.

The importance of this development in Imperial governmental methods is clearly very great. The institution of an Imperial Peace Cabinet fulfils the forecasts made during the war both by Sir Robert Borden, then Prime Minister of Canada, and by General Smuts, Prime Minister of South Africa, that there might arise, on the model of the Imperial War Cabinet, a governing body for the whole Empire in times of peace.

*November 19.* The meeting of Dominion Prime Ministers in June will continue, under peace conditions, the work of the Imperial War Cabinet. The distinction between the Imperial War Cabinet and the pre-War Imperial Conference lay in the functions of the former. Dominion Ministers attending the Imperial War Cabinet discussed on terms of complete equality with British Ministers matters requiring executive decision. They formed, as Sir Robert Borden said in one of his speeches, 'a Cabinet of Governments'. The Imperial Conferences, which preceded the Imperial War Cabinet, and continued during the latter years of the War side by side with the meetings of the Imperial War Cabinet, were devoted to the discussion of general principles.

In this sense the Imperial War Cabinet was an executive body, and during its meetings emphasis was continually laid on this difference



between its position and that of the Imperial Conference. It was a public manifestation of the position of the Empire as an aggregation of self-governing States regulating their common affairs by periodic consultation between their Prime Ministers.

The meeting of Prime Ministers in June will succeed to the position of the Imperial War Cabinet in this way. But it goes without saying that its decisions will in each case be subject to the approval of the various Parliaments, just as the decisions of the Imperial War Cabinet were, and, indeed, as the decisions of any Cabinet have always been under the British constitutional system.

## 2. REPORT OF THE CONFERENCE OF PRIME MINISTERS, 1921

*(Summary of Proceedings, Parliamentary Papers (Great Britain), 1921, Cmd. 1474, pp. 1-10)*

The proceedings of the Conference of Prime Ministers and representatives of the United Kingdom, the Dominions, and India opened at 10 Downing Street, on June 20, 1921, and were continued until August 5. During that period thirty-four plenary meetings took place. . . . Apart from the plenary meetings, the Prime Ministers of the United Kingdom and the Dominions met on eleven occasions, and eight meetings of Committees were held at the Colonial Office.

The greater part of the proceedings, particularly that relating to foreign affairs and defence, was of a highly confidential character, comparable rather to the work of the Imperial War Cabinets of 1917 and 1918 than of the Imperial War Conferences of those years. Other parts, though not so secret in their nature, were intermingled with matter which must for the present be kept confidential. In regard to such discussions only an indication has been given here of their general tenor. . . .

## III. Foreign Policy

The Conference then addressed itself to a detailed consideration of the foreign policy of the British Empire. The discussion on this was opened by the Secretary of State for Foreign Affairs, who made an exhaustive statement upon the course of foreign affairs since the Peace Conference. His statement was supplemented by Mr. Churchill, who dealt with the special problems of the Middle East.

There followed a series of important discussions, which were largely conversational in form, each representative intervening in turn as occasion prompted, without formality of any kind. The objects in view were threefold: First, that the members of the Conference should all put their ideas into the common stock and thus gain a thorough understanding of each other's point of view; second, that the principal questions of foreign policy should be examined by this means from every point of view; and third, that there should be a

free and full discussion of the general aims and methods to be pursued. The discussions, which covered the whole area of foreign policy and extended over many days, proved most fruitful in all these respects. They revealed a unanimous opinion as to the main lines to be followed by British policy, and a deep conviction that the whole weight of the Empire should be concentrated behind a united understanding and common action in foreign affairs. In this context very careful consideration was given to the means of circulating information to the Dominion Governments and keeping them in continuous touch with the conduct of foreign relations by the British Government. It was unanimously felt that the policy of the British Empire could not be adequately representative of democratic opinion throughout its peoples unless representatives of the Dominions and of India were frequently associated with those of the United Kingdom in considering and determining the course to be pursued. All members of the Conference expressed a vivid sense of the value of this year's meeting in that respect and a desire that similar meetings should be held as frequently as possible.

A precedent created by the Imperial War Cabinet was also revived with valuable results. From 1916 till the armistice the Prime Ministers of the Dominions and the representatives of India frequently sat with members of the British Cabinet to determine the measures necessary for the prosecution of the War. This method of procedure was also adopted by the British Empire Delegation during the Peace Conference in Paris, when all cardinal decisions were taken by the Delegation as a whole. In accordance with this precedent, the Prime Ministers of the Dominions and the representatives of India present in London this year were invited to meetings with members of the British Cabinet called to deal with Imperial and foreign questions of immediate urgency which arose in the course of the sittings.

One of the most important of these was the Upper Silesian question, which, during the session of the Conference, assumed an acute form, and was debated at each stage by the members of the Conference, whose interest in a matter so closely affecting the relations of Great Britain and France was incontestable. The main lines of British policy in connection with the solution of this problem received the unanimous approval of the Conference, and it was with satisfaction that they heard, before the termination of their sittings, that, the preliminary difficulties having been resolved, the final settlement of the question of the Silesian frontier was remitted, under the terms of the Treaty of Versailles, to an immediate meeting of the Supreme Council at Paris.

The problems of the Western Pacific and the Far East, together with the Anglo-Japanese Agreement, were also fully discussed; and President Harding's invitation to a conference on disarmament was

warmly welcomed by all the members of the Conference. The following statement, made by the Prime Minister in the House of Commons on 11th July, represents the general view of all members of the Conference on the main issues of the Pacific, as also on the question of disarmament:

'The broad lines of Imperial policy in the Pacific and the Far East were the very first subjects to which we addressed ourselves at the meetings of the Imperial Cabinet, having a special regard to the Anglo-Japanese Agreement, the future of China, and the bearing of both these questions on the relations of the British Empire with the United States. . . .

'The broader discussion of Far Eastern and Pacific policy to which we then turned showed general agreement on the main lines of the course which the Imperial Cabinet desired to pursue. I have already explained that the first principle of our policy was friendly co-operation with the United States. We are all convinced that upon this, more than any single factor, depends the peace and well-being of the world. We also desire, as I have stated, to maintain our close friendship and co-operation with Japan. The greatest merit of that valuable friendship is that it harmonises the influence and activities of the two greatest Asiatic Powers, and thus constitutes an essential safeguard to the well-being of the British Empire and peace of the East. We also aim at preserving the open door in China, and at giving the Chinese people every opportunity of peaceful progress and development.

'In addition to these considerations, we desire to safeguard our own vital interests in the Pacific, and to preclude any competition in naval armaments between the Pacific Powers. All the representatives of the Empire agreed that our standpoint on these questions should be communicated with complete frankness to the United States, Japan, and China, with the object of securing an exchange of views which might lead to more formal discussion and conference. The Secretary of State for Foreign Affairs accordingly held conversations last week with the American and Japanese Ambassadors and the Chinese Minister, at which he communicated to them the views of the Imperial Cabinet, and asked in turn for the views of their respective Governments. He expressed at these conversations a very strong hope that this exchange of views might, if their Governments shared our desire in that respect, pave the way for a conference on the problems of the Pacific and the Far East.

'The views of the President of the United States were made public by the American Government this morning. It is known to the House. Mr. Harding has taken the momentous step of inviting the Powers to a Conference on the limitation of armaments, to be held in Washington in the near future, and he also suggests a preliminary meeting on Pacific and Far Eastern questions between the Powers most interested in the peace and welfare of that great region, which

is assuming the first importance in international affairs. I need not say that we welcome with the utmost pleasure President Harding's wise and courteous initiative. In saying this I know that I speak for the Empire as a whole. . . .

. . . When it transpired . . . that there was some misunderstanding as to the nature of the preliminary conversations which had been suggested, the British Government, in the earnest desire to remove any possible misconception, and to meet what they believed to be the American views, at each stage of the impending discussions, volunteered to attend a meeting on the other side of the Atlantic, at which the agenda of the forthcoming conference at Washington could be discussed, and a friendly interchange of views take place in order to facilitate the work of the main conference later. The British Prime Minister and Foreign Secretary together with the Dominion Prime Ministers were prepared to attend such a meeting, if invited to do so by the American Government.

The Japanese Government signified their willingness, if invited, to take part in the suggested conversations.

The American Government, however, did not favour the idea, which was accordingly dropped.

This conclusion was viewed with the utmost regret by the members of the Imperial Conference, who had devoted no small portion of time to the working out of an arrangement, which they understood would be equally acceptable to all parties, and the abandonment of which could not, they feared, be otherwise than prejudicial to the great objects which all had in view. . . .

## V. Egypt

Close consideration was given to the question of British policy in Egypt and the future status of that country, and general agreement was reached regarding the principles by which His Majesty's Government should be guided in the negotiations with the Egyptian Delegation.

## VI. Imperial Defence

### (a) *Naval*

Several plenary meetings and several meetings of the Prime Ministers alone with the Secretary of State for India were devoted to considering the naval defence of the Empire, and the following resolution was adopted:

'That, while recognising the necessity of co-operation among the various portions of the Empire to provide such naval defence as may prove to be essential for security, and while holding that equality with the naval strength of any other Power is a minimum standard for that purpose, this Conference is of opinion that the method and expense of such co-operation are matters for the final determination

of the several Parliaments concerned and that any recommendations thereon should be deferred until after the coming conference on disarmament.'

In addition, a number of useful consultations took place between the Admiralty and the representatives of the several Dominions and India, at which were discussed such matters as the local co-operation of each Dominion in regard to the provision of oil tanks, local naval defence, &c.

### *(b) Military and Air Defence*

A discussion took place on the military and air defence of the Empire, and the views of the general and air staffs on the principles which should be adhered to in order to ensure co-operation in these matters were laid before Ministers. . . .

## IX. Position of British Indians in the Empire

The question of the position of British Indians in the Empire was discussed first at a plenary meeting, when the representatives of India fully explained the situation and the views held in India on the subject. The question was then remitted to a special committee under the chairmanship of the Secretary of State for the Colonies. At a final meeting on the subject the following resolution was adopted:

'The Conference, while reaffirming the resolution of the Imperial War Conference of 1918, that each community of the British Commonwealth should enjoy complete control of the composition of its own population by means of restriction on immigration from any of the other communities, recognises that there is an incongruity between the position of India as an equal member of the British Empire and the existence of disabilities upon British Indians lawfully domiciled in some other parts of the Empire. The Conference accordingly is of the opinion that, in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognised.

'The representatives of South Africa regret their inability to accept this resolution in view of the exceptional circumstances of the greater part of the Union.

'The representatives of India, while expressing their appreciation of the acceptance of the resolution recorded above, feel bound to place on record their profound concern at the position of Indians in South Africa, and their hope that by negotiation between the Governments of India and South Africa some way can be found, as soon as may be, to reach a more satisfactory position.'

## XIV. The Proposed Conference on Constitutional Relations

Several plenary meetings and several meetings of the Prime Ministers were devoted to a consideration of the question of the

proposed Conference on the Constitutional Relation of the component parts of the Empire, and the following resolution was adopted:

'The Prime Ministers of the United Kingdom and the Dominions, having carefully considered the recommendation of the Imperial War Conference of 1917 that a special Imperial Conference should be summoned as soon as possible after the war to consider the constitutional relation of the component parts of the Empire, have reached the following conclusions:

'(a) Continuous consultation, to which the Prime Ministers attach no less importance than the Imperial War Conference of 1917, can only be secured by a substantial improvement in the communication between the component parts of the Empire. Having regard to the constitutional developments since 1917, no advantage is to be gained by holding a constitutional conference.

'(b) The Prime Ministers of the United Kingdom and the Dominions and the representatives of India should aim at meeting annually, or at such longer intervals as may prove feasible.

'(c) The existing practice of direct communication between the Prime Ministers of the United Kingdom and the Dominions, as well as the right of the latter to nominate Cabinet Ministers to represent them in consultation with the Prime Minister of the United Kingdom are maintained.'

### 3. SPEECH OF THE RIGHT HON. ARTHUR MEIGHEN AT THE CONFERENCE

(*Montreal Gazette*, June 28, 1921)

*London, June 27.* A declaration of Dominion rights by Rt. Hon. Arthur Meighen, Premier of Canada, setting out what, in his judgement, should constitute an adequate voice for the Dominions in the foreign affairs of the Empire, was to-day debated at length by the Conference of Prime Ministers. Premier Meighen, whose address was by way of being a review of Lord Curzon's outline of the world policy of the British Foreign Office, laid down four cardinal principles which, he declared, were essential to the heightened status of the Dominions. Although the speech and the discussion which ensued have not yet been made public, and may for the time being be regarded as confidential, it is understood his four points were as follows:

First—That on all questions of foreign policy which more directly concern the British Government, such as matters arising in connexion with Palestine, Mesopotamia, and the Middle East, the governments of the Dominions should be kept thoroughly and constantly informed.

Second—That upon all questions of foreign policy affecting the Empire as a whole the Dominion Governments must be consulted.

Third—That the British Government should enter into no treaties or special alliances without consultation with, and the advice of, the Dominions, and that all such treaties, when entered into, be subject to the approval of the Dominion Parliaments.

Fourth—That upon all questions arising as between the United States and Canada, the advice of the Dominion Government must be accepted as final.

The foregoing doctrine which is by no means revolutionary, and, in fact, representing nothing more than that Hon. N. W. Rowell, former President of the Privy Council, laid down in Parliament last session as the very minimum of Dominion rights, created considerable stir in the Conference. It had been expected that the Prime Ministers would proceed with the Anglo-Japanese Alliance immediately Premier Meighen completed his statement, but Premier Hughes, of Australia, who characterized it as a 'vastly important declaration, calling for thorough examination', insisted that it be discussed, and in this he was supported by Premier Smuts, of South Africa.

Premier Meighen, in his address, combatted a statement by Premier Massey, of New Zealand, that the Imperial War Cabinet had advised the King and that, therefore, the continuation of the War Cabinet would give the Dominions a greater voice in the Empire's foreign policy than a mere Conference such as that now being held.

The Canadian Premier argued that the Dominion Ministers in the Imperial War Cabinet did not advise the King, but by consultation with the British Cabinet, merely helped influence the advice which the latter gave to the Sovereign. In this respect, indeed, Mr. Meighen is probably not prepared to go as far as Premier Smuts or even Sir Robert Borden or Hon. N. W. Rowell, who, it will be remembered, have practically advocated that the Dominion Cabinets advise the King direct. Premier Meighen apparently sees difficulty and danger in this, while willing to accept a condition under which guarantee would be secured that the advice of the Dominions, on all matters exclusively affecting them, be taken.

Asked by a member of the Conference where or how he would draw the line between questions affecting the Empire as a whole and those with which Britain alone was concerned, Premier Meighen replied that the matter would have to be left to time and experience.

#### 4. STATEMENT OF THE RIGHT HON. D. LLOYD GEORGE ON THE FOREIGN RELATIONS OF THE EMPIRE

(*British House of Commons Debates*, December 14, 1921, pp. 28-30)

. . . Mr. LLOYD GEORGE (Prime Minister): The position of the Dominions in reference to external affairs has been completely revolutionised in the course of the last four years. I tried to call attention to that a few weeks ago when I made a statement. Since the War

the Dominions have been given equal rights with Great Britain in the control of the foreign policy of the Empire. . . . Although they came to help the Empire in a policy which they had no share in passing, they felt that in future it was an unfair dilemma to impose upon them. They said: 'You are putting us in this position—either we have to support you in a policy which we might or might not approve, or we have to desert the old country in the time of trouble. That is a dilemma in which you ought never to put us. Therefore, in future, you must consult us before the event.' That was right; that was just. That was advantageous to both parties. We acceded to it gladly.

The machinery is the machinery of the British Government—the Foreign Office, the Ambassadors. The machinery must remain here. It is impossible that it could be otherwise, unless you had a Council of Empire, with representatives elected for the purpose. Apart from that, you must act through one instrument. The instrument of the foreign policy of the Empire is the British Foreign Office. That has been accepted by all the Dominions as inevitable. But they claim a voice in determining the lines of our future policy. At the last Imperial Conference they were there discussing our policy in Germany, our policy in Egypt, our policy in America, our policy all over the world, and we are now acting upon the mature, general decisions arrived at with the common consent of the whole Empire. The sole control of Britain over foreign policy is now vested in the Empire as a whole. That is a new fact, and I would point out what bearing it has upon the Irish controversy.

The advantage to us is that joint control means joint responsibility, and when the burden of Empire has become so vast it is well that we should have the shoulders of these young giants under the burden to help us along. It introduces a broader and a calmer view into foreign policy. It restrains rash Ministers, and it will stimulate timorous ones. It widens the prospect. When we took part in the discussion at the Imperial Conference, what struck us was this, that, from the mere fact that representatives were there from the Pacific and the Indian Ocean, and from other ends of the world, with different interests, the discussion broadened into a world survey. That was an advantage. Our troubles were Upper Silesia, the Ruhr Valley, Angora, and Egypt, and they came there with other questions—with the problems of the Pacific, Honolulu, the Philippines, Nagasaki, and Peking. All these problems were brought into the common stock, and a wide survey was taken by all the representatives of the Empire, who would honour the policy decided upon, and support that policy when it was challenged. They felt that there was not one among them who was not speaking for hundreds of thousands and millions of men who were prepared to risk their fortunes and their lives for a great Empire. . . .



## 5. IMPERIAL CABINET OR IMPERIAL CONFERENCE?

(John W. Dafoe in *Manitoba Free Press*, July 6, 1925)

While Sir Robert Borden, and, doubtless, other statesmen of the Dominions, were not clear in their own minds as to just where the Dominions were placed by the developments from 1917 to 1919, and looked to the constitutional conference for a solution, there was no such doubt in the minds of the public men and the publicists of Great Britain. The public men of Great Britain and of the Dominions used the same terms, employed the same phrases; the new Dominion status was one of 'nationhood', of 'equality'; the Dominions were 'partner nations' with Great Britain. But these words when used by Lord Milner or Mr. Lloyd George or *The London Times* did not mean what they meant when used by Sir Robert Borden in Ottawa, or by General Smuts in Capetown. The governing idea in the mind of the British public men was that an instrument of Imperial government had come into being in the form of an Imperial Cabinet. The 'equality' of the British nations was subject to the authority of this body; through it the 'partnership' was to be exercised. Something akin to Imperial federation, minus an Imperial parliament to which the Imperial Cabinet would be responsible, had been attained.

This attitude of mind is revealed in practically everything that was said or written in Great Britain about the Imperial question in the years immediately following the War. 'The real importance of the war cabinet', said *The Times* on January 2, 1919, 'was, and is, that it has executive authority and is not merely advisory and consultative as all Imperial bodies that went before it were'. 'That', *The Times* added impressively, 'is a permanent advantage which cannot possibly be forfeited in future.' The only problems remaining were how to provide for Dominion representation in the Cabinet, 'and how to settle the share of the Dominions in such corollaries of executive authority as financial provision for defence by land and sea'. These were the problems; but the question of Empire governance was settled—there was to be an Imperial Cabinet with executive authority.

Under the scheme as outlined to the British Parliament in 1918 by Lloyd George, the Imperial Cabinet was to have a continuous existence; once a year all the Prime Ministers were to meet for the formulation of policies, but during the remainder of the year when they were absent in their own countries they were to be represented in London by deputies. But this plan was never put into operation. When the Peace Treaty was signed in June 1919, and the British Empire delegation in Paris dispersed, the so-called Imperial Cabinet came to an end. No arrangement was made before dispersion for further meetings; and the substitutes for the Prime Ministers, to reside in London, were not appointed. In May 1920, Percy Hurd, M.P., asked the British Government if it was not a fact 'that there

is no cabinet organization in active and continuous working for the consideration of Imperial matters', and Bonar Law, in reply, said it was a fact, the reason being 'that the ministers of the Dominions have not thought suitable to have a representative'. But, though not operative, the Imperial Cabinet was still in being in Mr. Law's mind; and in the following November, in informing Parliament that a meeting of the Prime Ministers was being arranged for the following year, he was careful to explain that this was to be, not the special constitutional conference, but 'a meeting on the lines of the Imperial cabinet meetings which took place in 1917 and 1918'. *The Times* in its comment said that this meeting would 'mark the beginning of a definite system of Empire government in peace by an Imperial cabinet'.

Thereafter, the view that the 1921 conference was to be a meeting of the Imperial Cabinet was systematically put forward. J. A. R. Marriott, M.P., writing to the *Edinburgh Review* in April 1921, said, 'The Imperial conference will not, it is understood, be in session; the representatives of the Dominions will come together as members of the supreme executive.' To put the matter beyond question, Mr. Winston Churchill, the Secretary of State for the Colonies, said in a public address in April 1921: 'This was a very important year in the life of the British Empire, for it would see the first peace meeting of the Imperial cabinet. It would not be like the old Imperial conferences, but a meeting of the regular Imperial cabinet.'

There were dissenting voices to this claim. Professor Keith, in a communication to the British press, challenged the accuracy of Mr. Churchill's definition; among other reasons given by him there could not be a cabinet without responsibility to a single legislature. The use of the term, he said, would awaken distrust in the Dominions, and 'is likely to prove a stumbling block in the development of Imperial co-operation'. Mr. Meighen, the new Prime Minister of Canada, disowned in the Canadian Parliament any intention of agreeing to an Imperial executive. Perhaps because of these protests, the gathering, when it assembled, operated under the old title of Imperial Conference; but, as the sequel clearly showed, this did not in the least affect the confident belief of many of those who took part in it that it was, in fact, a meeting of the Empire's executive.

At this Conference there was much discussion about foreign policy. The renewal of the Japanese treaty, plainly a matter of common concern, was vigorously discussed; and despite the determination of the British, Australian, and New Zealand representatives to have the treaty renewed, the active opposition of Mr. Meighen, with moral backing from General Smuts, blocked these plans so effectually that the deadlock was broken temporarily by Lord Birkenhead's opportune discovery that the treaty, in place of terminating in 1921 as had been announced, ran in perpetuity until denounced by a year's notice; and permanently by the Washington Conference which

replaced the Japanese treaty by the Four-Power Pacific treaty. It is, of course, an open historical secret that the idea of the Washington Conference originated in the Imperial Conference; and was skilfully shifted to the American capital.

The incident of the Japanese treaty discussion has considerable constitutional significance. It demonstrated that in a matter of common concern a common agreement must be reached before action can be taken. It demonstrated further that the principle of the *liberum veto* was implicit in the Conference: it was to all intents and purposes exercised by Canada on this occasion. This should have been sufficient to make it clear that the meeting was a conference of equals, and not a cabinet, subject to majority control; but the significance of Canada's action was not fully realized, even by the Canadian Premier. The further proceedings of the Conference tended to confirm the illusion that it was an executive body. The published reports of the Conference are of the scantiest nature, but it is known that Lord Curzon brought down his foreign policy programme and had it confirmed, point by point, by the delegates.

The summary of the transactions records that the Conference reached 'a deep conviction that the whole weight of the Empire should be concentrated behind a united understanding and common action in foreign affairs'. To this end it was 'unanimously felt' that representatives of the Dominions and India should be 'frequently associated with those of the United Kingdom in considering and determining the course to be pursued'. Meetings 'annually or at such longer intervals as may prove feasible' were suggested.

The most illuminating of the resolutions passed was one repealing the arrangement reached at the 1917 Conference for a special constitutional conference after the War. 'Having regard to the constitutional developments since 1917', said the resolution, 'no advantage is to be gained by holding a constitutional conference.' This is equal to saying that the problem of Empire relationship had already been solved. How? Obviously by the inauguration of an Imperial Cabinet, constituting an executive or central body of control for the Empire.

This belief that the Imperial Conference of 1921 had regularized and established the plan of Empire government by cabinet, which had before been a somewhat nebulous conception, promptly found expression. Mr. Hughes, through the medium of *The Times*, enlightened the public as to the great change that had been effected. Before the War, said Mr. Hughes, the Imperial Conference was an advisory body of honoured guests. The Dominion Prime Ministers then met, and talked, and passed resolutions; but British Ministers held themselves quite free to ignore that advice, and did ignore it more often than not. Now, said Mr. Hughes, 'the Dominion prime ministers attend these meetings in a very different spirit'. They expect, and receive, from British Ministers, 'frank recognition' of their 'common

right' to an 'equal voice' in the shaping of British international policy. They do not limit themselves to the discussion of the 'broad general principles' of foreign policy. They deal, 'directly and in detail', with the 'great and urgent problems' which confront the diplomacy of the British states. In these discussions differences emerge; but that is to be expected 'in all cabinets'. In the event, all the decisions on foreign policy at the meetings in Downing Street were the decisions of a 'substantial majority' of the British Prime Ministers.

This development, as revealed by Mr. Hughes, appeared to *The Times* to be highly satisfactory. 'This is the new system', it said, 'by which the will of the British states in matters of foreign policy is ascertained and made effective.' The system had, it admitted, 'its obvious dangers'. Thus, 'a majority decision on foreign policy might be ignored or repudiated by the state whose prime minister had voted in the minority'. This indicated what would inevitably happen under these circumstances; but *The Times* explained that it was prepared to take the risk.

Mr. Massey, Prime Minister of New Zealand, also bore testimony, in an interview in *The Times*, to the importance of the changes inaugurated by the Conference. 'What was done at the recent conference has rendered unnecessary the so-called constitutional conference which it was intended to hold next year.'

To this informal exposition of the 'new system' there was soon added an official declaration by Lloyd George. Speaking in Parliament in December 1921, on the Irish settlement, the British Prime Minister said that 'The position of the Dominions in reference to external affairs has been completely revolutionized in the course of the last four years'. Under the new system the Dominions must be 'consulted' about foreign policy. 'The machinery is the machinery of the British government—the Foreign Office, the Ambassadors. The machinery must remain here. It is impossible that it could be otherwise unless you had a Council of Empire where you had representatives elected for the purpose. Apart from that you must act through one instrument. The instrument of foreign policy of the Empire is the British Foreign Office. This has been accepted by all the Dominions as inevitable.' 'The advantage to us', Lloyd George went on to say, 'is that joint control means joint responsibility, and when the burden of Empire has become so vast, it is well that we should have the shoulders of these young giants under the burden to help us along.'

Lord Curzon, Secretary of State for Foreign Affairs, in a public address in London, made a still more explicit statement. Upon that occasion he said:

In former days the policy of Great Britain was the foreign policy of Great Britain alone. Now it is the foreign policy of the British Empire. The initiative, and, to a large extent, the executive action, must necessarily

remain in the Foreign Office; but in the various Imperial conferences assembled in London full statements were made to the ministers assembled from all the Dominions on foreign affairs. Every aspect of them was discussed, a foreign policy for the whole Empire was framed, and in the intervals when the Dominion ministers were not here, full papers were sent to them, and on no matter of first-class importance was a decision taken without their being informed. . . . This is a great change, and it will readily be seen what enormous strength it adds to the position of the Foreign Secretary. He feels now that he is not only speaking for Downing Street or for the British Isles but for the state which constitutes the British Empire.

It was left, however, for Mr. Hughes, of Australia, to lift the question clear of all ambiguities and state with clarity and precision the character and the nature of the innovation. Mr. Hughes, speaking in the Australian Parliament, following his return from London, said that the only Imperial organization in existence was the Imperial Cabinet. The Prime Minister of Australia was always a member of this Cabinet; when he was in London he would take part in its decisions; when absent he was to be fully informed, presumably so that he could tender advice. There were to be full meetings of this Cabinet annually, if possible, to lay down general principles of policy; in the interval, decisions were to be made by the members of the Imperial Cabinet in London, that is to say, by the British Cabinet, subject to the right of the absentee members—the Prime Ministers of the Dominions—to be informed.

The implications of this doctrine are inescapable. It gives the Imperial Conference, or Imperial Cabinet, whatever it is called, power when in session to commit all the British nations to external policies and engagements—by a majority vote, according to Mr. Hughes's earlier statement to *The Times*—and in the recesses that power rests with the British Government, subject to the right of the Dominion Prime Ministers to be 'informed'. In all cases there would be, as both Lloyd George and Curzon were careful to point out, joint responsibility for action taken by the Foreign Minister.

Such were the 'constitutional developments' which were held by the Imperial Conference in 1921 to justify the abandonment of the project for holding a constitutional conference.

The Imperial Cabinet idea in its essence was that the British Government could reach decisions binding upon the whole Empire and take action for which all parts of the Empire were responsible provided it 'informed' the Dominions and invited their opinion. Mr. Meighen, upon his return from the Conference, put the matter quite neatly in a speech at Toronto, September 2, 1921: 'Great Britain in reaching her decisions invites the advice and viewpoint of every portion of the Empire.'

The British Government thereafter acted upon its understanding

of the arrangement arrived at; and within the next few years there were three striking exemplifications of how the system worked—the difficulty which arose over the representation of the Dominions at the Washington Disarmament Conference; the Chanak incident; and the misunderstanding between the British and Canadian Governments about the Lausanne Conference.

B. THE WASHINGTON CONFERENCE ON THE LIMITATION  
OF ARMAMENT, 1921-2

I. CORRESPONDENCE RESPECTING DOMINION REPRESENTATION AT  
THE CONFERENCE

(*Canadian Sessional Papers*, 1922, No. 47A)

Ottawa, August 22, 1921.

Prime Minister, London.

Would be glad to receive information by cable concerning Washington Conference indicating position with regard to Agenda scheme of representation proposed and other aspects of arrangements particularly with regard to procedure contemplated for handling Far Eastern and Pacific questions. Shall be glad if you will arrange to furnish us by mail with copies of relevant correspondence, memoranda, and papers prepared by experts for use at Conference. I hope also you will arrange to telegraph us from time to time any important developments.

Prime Minister.

Prime Minister, London.

Ottawa, August 27, 1921.

*Private and Personal.*

With reference to my telegram of 22nd August most anxious to know method by which it is proposed to provide for representation of Canada on British Empire Delegation. This may have important bearing on Parliamentary arrangements here, and I should be glad to receive any information on this point at the earliest possible moment.

Prime Minister.

London, August 29, 1921.

Prime Minister, Ottawa.

With reference to your telegram of August 23, Washington Conference. As regards Agenda, . . . so far we have heard nothing from United States Government. Until we know whether Irish question will require an Autumn Session of Parliament it is impossible to make any nominations here as regards representation. You will be notified by telegraph of any important developments. Memoranda are being prepared, but are not yet available.

Prime Minister.

London, October 3, 1921.

Prime Minister, Ottawa.

I am most anxious for standpoint of Canada to be well represented on British Empire Delegation, at approaching Conference in Washington. Please inform me by telegraph whom you wish appointed. Any officer whom you wish to send to serve on Secretariat of (D. Lloyd George?) (British Empire Delegation?) will be of course welcome.

Prime Minister.

Prime Minister, London.

Ottawa, October 3, 1921.

*Washington Conference.*

With reference to your telegram of the 3rd October your proposal is appreciated and I desire to nominate Sir Robert Borden as Member of British Empire Delegation. Mr. Loring C. Christie, legal adviser, Department of External Affairs, is proposed to serve on Secretariat. Shall be glad if communication to us of any relevant papers for use in connexion with the Conference as suggested in my telegram of August 22nd can be expedited.

Prime Minister.

London, October 3, 1921.

Prime Minister, Ottawa.

Full text of United States invitation to Disarmament and Pacific Conferences at Washington forwarded in Secretary of State's despatch, September 12, Dominions 389.

The following is the present position with regard Washington Conferences. His Majesty's Government have telegraphed to Ambassador at Washington as follows: Begins: With reference to your telegram Number 600 (One) What is general procedure contemplated by U.S.A. Government for the Conferences? Is Pacific Conference to follow the Disarmament Conference or, vice versa, or are they to be held simultaneously by detachments of the national delegations sent to Washington? Do United States Government propose to discuss air as well as naval or military armaments?

(Five) The Prime Minister deeply regrets that as there are so many questions of urgent importance requiring his presence in England he will be unable to attend any Conference at Washington this year. Difficulties arising out of unemployment and general privations which must inevitably arise this winter render his presence in England necessary even if the Irish question is settled.

(Six) We may wish to send as many as six representatives. We will let United States Government have the names at the earliest possible moment. We must, however, first communicate with Dominions and India. Ends.

It was arranged at recent Imperial Conference that His Majesty's Government should represent the whole Empire at Washington. While quite prepared to represent Dominions, His Majesty's Government would prefer British Delegation to send men with special knowledge of Canadian, Australasian, and Indian points of view.

I greatly regret that it will be impossible for me to attend in person, as Conference is certain to be prolonged. I have been obliged to forgo any prolonged absence from England this Winter in view of many questions of urgent importance requiring my presence here. The unsettled Irish situation and the problem of unemployment which will inevitably entail more widespread privation, and other reasons make me feel strongly that my presence in this Country will be necessary without any considerable interval such as would be required for effective participation in discussion at Washington. Lord Curzon's attendance is also unavoidably prevented.

British Delegation, in my belief, should consist of Bonar Law and First Lord of the Admiralty with Balfour as head. It is not quite certain that Bonar Law will be willing to serve, but he has been approached. Ends.

Prime Minister.

Prime Minister, Ottawa.

London, October 5, 1921.

With reference to your telegram of the 3rd October I am delighted Sir Robert Borden has been chosen to represent Canada on British Empire Delegation at the Washington Conference and that once more he is willing to put his distinguished ability and experience at the service of the Empire.

Prime Minister.

Premier, Ottawa.

Pretoria, Oct. 19, 1921.

I notice from press that you are sending representative to Washington Conference. I do not know whether you have received invitation from United States through British Government or otherwise. Would very strongly urge that you should press for such invitation before sending delegate. United States did not ratify Peace Treaty to which we are signatories as component independent States of British Empire. On the contrary agitation in Congress against our independent voting power in League Nations was direct challenge to new Dominion status. This is first great international Conference after Paris and if Dominions concerned are not invited and yet attend, bad precedent will be set and Dominion status will suffer. If a stand is made now and America acquiesces, battle for international recognition our equal status is finally won.

Smuts

Prime Minister.



Prime Minister, Ottawa.

London, October 21, 1921.

General Smuts has sent me copy of his telegram to you.

I am completely in accord, of course, with his view that Dominion representatives should hold same status as at Paris. Foreign office propose with your approval to submit to the King full power for each Dominion representative to sign only on behalf of his respective Dominion in accordance with precedent established at Paris. If this procedure is approved presumably your Privy Council will pass Minute sanctioning action of Foreign Office as in the case of Dominion Representatives at Paris. Under this procedure signature of each Dominion delegate will be necessary in addition to signature of British Delegates to commit British Empire Delegation as a whole to any agreement made at the Conference, and any Dominion delegate can, if he wishes, reserve assent on behalf of his Government. . . .

Prime Minister.

Smuts, Prime Minister, Pretoria.

Ottawa, October 23, 1921.

Yours nineteenth stop in view fact that Conference is by invitation brief time intervene before meeting stop Do not think possible that subject could be reviewed between London and Washington now to attain end you desire.

Arthur Meighen.

Prime Minister, London.

Ottawa, October 27, 1921.

With reference to your telegram October twenty-first respecting position of Dominion representatives at Washington Conference. In the circumstances to which you allude we agree to proposed procedure. In accordance therewith, minute of Council will be passed and transmitted as basis for issuance of full Powers to representative of Canada. Essential that Dominion representatives should hold same status as at Paris and that this status must not be allowed to be prejudiced by proceedings at Washington conference.

Prime Minister.

*Copy of Telegram from the Governor-General to the Colonial Office*

Ottawa, October 31, 1921.

In accordance with terms of Order in Council approved October 27, regarding forthcoming Conference on Limitation of Armament and on Pacific and Far Eastern Questions summoned by Government of United States to meet at Washington November 11, it is desired that His Majesty may be humbly moved to issue letters patent to Right Honourable Sir R. L. Borden, member of His Majesty's Most

Honourable Privy Council, G.C.M.G., K.C., naming and appointing him as Commissioner and Plenipotentiary in respect of Dominion of Canada with full power and authority to conclude with such Plenipotentiaries as may be vested with similar power and authority on part of any powers or states, any treaties, conventions, or agreements in connexion with said Conference, and to sign for and in name of His Majesty The King in respect of Dominion of Canada everything so agreed upon and concluded and to transact all such other matters as may appertain thereto.

Despatch follows by mail.

(Sd.) BYNG.

## 2. REPORT OF SIR ROBERT BORDEN, CANADIAN DELEGATE TO THE WASHINGTON CONFERENCE

(*Canadian Sessional Papers*, 1922, No. 47, pp. 23-4, 42-6)

### *Application of Treaty to Dominion Navies*

45. There is, it will be noticed, no express provision as to the application of the Treaty to the existing or future navies of the Dominions; and it is apparent that no such provision was necessary. From the point of view of the other Powers the navies of the Empire must necessarily be counted as a single force in estimating the ratio of strength. At the outbreak of the late war and throughout its course they did in fact combine as a single force; and it was assumed that they would do so again in the event of any struggle that might involve the issue of national existence. Thus, the British Empire was considered from the aspect of its entire naval power; and the Treaty means that the combined navies of Great Britain and the Dominions may not exceed in capital ships 525,000 tons and in aircraft carriers 135,000 tons. One of the British Empire capital ships designated for scrapping is the *Australia* which forms part of the Australian Navy (see Chapter II, Part 3, Section II, British Empire Table of Replacement and Scrapping of Capital Ships). Should the Australian Government at the end of the naval holiday wish to replace the *Australia*, the replacement tonnage of any such Australian capital ship would necessarily be reckoned as a part of the British Empire total of 525,000 tons. The like considerations would govern in the case of any other Dominion Navy. All other limitations imposed by the Treaty—such as the 10,000-ton limit on individual auxiliary craft or cruisers, the limitations as to aircraft carriers and upon the calibre of guns, and the provisions designed to secure the execution of the Treaty and prevent its evasion (e.g., Articles XII-XVIII)—apply of course to the naval activities of the Dominions. But as the Treaty places no restriction upon the numbers or total tonnage of cruisers, destroyers, submarines, and other auxiliary craft, the Dominions are entirely free, as other nations are, to build war vessels of these types.

*Imperial co-operation.*

46. While the provisions of the Treaty limit the total naval power which the British Empire as a whole is permitted to maintain, they leave entirely untouched the question of co-operation in the maintenance of that power. This question stands exactly where it stood before the Conference, for the decision of the Parliaments of the Empire. The subject of Imperial co-operation was not discussed at Washington, either in the British Empire Delegation or elsewhere; it was unnecessary to consider it for the purposes of the Conference, nor were the Delegates authorized to discuss it.

. . . . .

*Canadian appointment.*

105. I ought not to conclude without some account of the general features of Dominion representation at the Conference and of the system and methods of the British Empire Delegation. The nature of my appointment by the Canadian Government as the representative of Canada may be seen from the terms of the Minute of Council passed, of which a certified copy was handed to me before my departure for Washington. The Minute recites 'that as the result of telegraphic communication with the Prime Minister of the United Kingdom it has been arranged that a representative of Canada should be appointed as a member of the Delegation which will represent the British Empire at the Conference on the Limitation of Armament'.

. . . . .

*Form of treaties.*

107. The style of the treaties concluded at Washington is also of interest. In their formal aspects—their preamble, their preliminary statement of purpose, their recital of the names of the plenipotentiaries, and finally their signature—they were drafted according to the scheme of the Treaty of Versailles and the other treaties concluded at Paris. It is 'the British Empire' in each case that is recited as one of the Powers that have resolved to conclude the treaty, and that have to that end appointed plenipotentiaries. As the appointment under our constitution proceeds from the King, the usual formal description of His Majesty, which embraces the whole British Empire, follows. Since, however, the assent of their Governments is necessary to commit the Dominions, the names of the plenipotentiaries, appointed on their advice respectively and holding Full Powers as shown above, are set out; and they are preceded in each case by the name of the Dominion as a distinguishing heading. Finally, the treaties are signed on behalf of their respective Dominions by the plenipotentiaries so named. A similar formal procedure is followed for the case of India.

*Ratification.*

108. According to custom the treaties are signed subject to ratification; but of course the method of ratification is determined for each Power by its own constitutional practice. The constitutional convention of the British Empire, under which the final act of ratification by the King of a treaty signed on behalf of a Dominion must be based on the assent of that Dominion, was fixed by the practice of recent years worked out between the members of the Empire themselves. As that practice is entirely within the control and determination of the nations of the Empire, the Washington treaties do not affect it. In like case is the question whether the treaties shall be submitted to Parliament for approval before ratification is recommended, although in this respect the practice is determined by each part of the Empire for itself; for example, it appears from the Speech of His Excellency at the opening of the present Session that with respect to the Washington Treaties the Government consider that the 'approval of Parliament ought to precede their ratification on behalf of Canada'.

*British Empire Delegation.*

110. These formal arrangements illustrated a recognized convention based upon a definite principle. In order to commit the British Empire Delegation as a whole to any agreement reached at the Conference, the signature of each Dominion Delegate was necessary in addition to that of the others, and any Dominion Delegate could, if convinced or instructed that his duty lay that way, reserve assent on behalf of his Government. On the other hand, in the internal economy of the body known as the British Empire Delegation the design and effect were to reconcile the principle of diplomatic unity in the Empire's international relations with the principle of co-ordinate autonomy for each self-governing nation. All the British Empire Delegates took part in the meetings of the two main Committees of the Conference, and in the Plenary Sessions; while in the Sub-Committees, whose personnel was always limited to one from each Power, a Dominion Delegate was frequently designated to represent the British Empire. Frequent meetings of the seven British Empire Delegates were held to exchange views, to discuss the Conference problems as they arose, and to reach conclusions; their technical advisers were present to furnish information and advice according to the subject at hand; while the Secretariat, including the Secretaries for the Dominions and India, also attended to assist the meeting, to record the results, and to ensure that any appropriate action should be taken afterwards. The agenda of each meeting, with relevant memoranda, drafts, and other necessary papers, were circulated to each Delegate in advance by the Secretariat. In the ordinary course the Chairman was Mr. Balfour; in his occasional absence the other

Delegates took the Chair in rotation. These arrangements were a reproduction of the practice followed by the British Empire Delegation at Paris.

. . . . .

*Effect of Delegation arrangements.*

112. Under these various arrangements the entire Delegation kept under constant review the questions confronting the Conference and at every stage became aware of developments occurring, not only in the formal meetings of the Conference and of its Committee and Sub-Committees, but also in the course of the many informal conversations between members of Delegations. The Delegation meetings afforded the means for harmonizing the various points of view. They ensured that the particular interest of any part of the Empire should be considered by the Conference. For example, the special interests of Canada, Australia, and New Zealand were thus taken into account in reaching the formula in the Naval Treaty for preserving the *status quo* in respect of the fortifications of the Pacific islands (see paragraph 39 above); while the special position of India in relation to the Chinese customs tariff on goods entering by land frontiers (see paragraph 78 above) was similarly treated. Again there was the category of questions of high policy, so called; questions that by common understanding are felt by the nations to raise directly the fundamental issues of peace or the reverse; questions therefore of general concern to the whole Empire rather than of particular interest to any part; questions such as those involved in the Quadruple Pacific Treaty, in the equilibrium of power defined in the Naval Treaty, or in matters affecting the future position of the Powers in the Far East. Here too the Delegates were enabled by the meetings of the Delegation to exchange views and to reach in advance conclusions that could be put forward on behalf of the whole Empire. Throughout the Conference each Delegate was in touch with his own Government by means of the telegraphs or the posts. Thus no Dominion could be committed without its consent, and each was enabled to state its view and exert its influence in advance of the formulation of agreement with other Powers. It should be added that in many instances the influence of the *Dominions* contributed very materially to the conclusions finally reached.

113. I have attempted this description and analysis of the organization of the British Empire Delegation and of its relation to the work of the Conference because this aspect is perhaps of special interest to Canada, and full information thereon is desirable. Doubtless the scheme will be susceptible of improvement as time goes on, but broadly speaking I believe the experience of this Conference has again justified it as a means whereby under our present constitutional system the Empire can effectively act at international gatherings.

The formal aspects of the Treaties and of our appearance at the Conference recognize both the principle of unity and that of co-ordinate autonomy; but neither could be real without effective means whereby in advance of action the views of all would be fully and frankly exchanged and considered in common. The organization of the British Empire Delegation provided that means. Given such means and given goodwill, the experience of this Conference has again shown that agreement and unity may be expected to follow under no compulsion other than that imposed by the common purpose of free and equal peoples to maintain a single allegiance and to recognize their international responsibilities. Throughout the Conference, a cordial and unvarying spirit of co-operation marked the action of the British Empire Delegation; I refer not only to the relations between the principal Delegates, but also to the work of all those who in whatever capacity, whether from Great Britain or the Dominions or India, assisted in the task.

#### *Invitation to the Conference.*

114. There has been some public discussion of the position of the Dominions at Washington; it has been perhaps somewhat lacking in a precise definition of the point at issue; but I understand the suggestion to be that there has been some derogation from the status of the Dominions. So far as this alludes to the method of appointment of the Dominion Delegates and their standing in the British Empire Delegation, the issuance of Full Powers, the form of the Treaties, their signature, and so on, it has been seen that the practice at Washington followed that of the Paris Peace Conference, which is the most recent outstanding precedent. The point I believe has really to do with the form of the invitation. For the Washington Conference the invitations were issued by the United States, and so far as the Empire is concerned it was the Government of Great Britain that was formally addressed. Shortly before the Conference met the suggestion became prominent that an invitation should have been addressed direct to each Dominion Government. Whether in the circumstances the suggestion was timely, whether the idea itself is expedient, what the difficulties might have been in carrying it out, it is no part of my duty to inquire; the point is one of public policy for the Government itself to consider. For the sake of clarification it may be observed, however, that, so far as the immediate practical aspect is concerned, the forms and practice followed at Washington were not affected by the form of the invitation; they developed independently of it, and it seems clear that in any such case they would so develop in the natural course, since it is for the British Empire to determine for itself the manner in which it will enter into obligations with other Powers. While practically the question did not affect the right of the Dominions to participate in the discussions and to signify for

themselves their assent to agreements or their dissent, it does seem to involve considerations as to their status and prestige in international affairs. In that aspect it is not without importance, and it will doubtless present itself to the Governments of the Empire in the future. Whether the solution lies in the direction of separate direct invitations, or of some other alteration, notified to the other Powers, in the present methods of communication, it should leave the Powers under no misapprehension as to constitutional relationships within this Commonwealth of Nations.

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### 3. REPORT OF SIR JOHN SALMOND, NEW ZEALAND DELEGATE TO THE WASHINGTON CONFERENCE

*(New Zealand House of Representatives Journals, 1922,  
Appendix, Vol. I, A-5, pp. 14-16)*

Questions of interest and importance arise as to the constitutional and international significance of the representation of the oversea Dominions at the Washington Conference. Suggestions have been made in certain quarters that by permitting the presence of the self-governing dependencies of the Crown at international conventions such as those of Versailles and Washington those Dominions have in some manner acquired a new international status—that they are now recognized for international purposes as independent States, although in their constitutional relations they remain portions of the British Empire. It is not easy to attach any definite meaning to this suggestion; but, whatever its precise significance may be, there seems no foundation for it in the facts as to the Washington Conference. The true significance of the presence of representatives of the Dominions at that Conference is not that those Dominions have acquired for either international or constitutional purposes any form of independent status, but that they have now been given a voice in the management of the international relations of the British Empire as a single, undivided unity—relations which were formerly within the exclusive control of the Government of Great Britain.

It is to be noticed that the invitation of the American Government to attend a Conference at Washington on the limitation of armaments and on Pacific questions was an invitation to the Government of Great Britain and to the other seven Powers—namely, France, Italy, Japan, China, Belgium, Holland, and Portugal. There was no invitation to Canada, Australia, New Zealand, or any other Dominion of the Crown. The Government of every State so invited to Washington was left at liberty to send such and so many plenipotentiary delegates as it thought fit. The British Government thought fit to send seven, and to appoint four of these on the recommendation of the

Governments of the overseas Dominions. These seven constituted jointly the British Delegation representing the British Empire, just as four plenipotentiaries represented France, and three represented Italy.

A copy of the Letters Patent under the Great Seal and the King's Sign-manual by which I was appointed a member of the British Delegation is prefixed to this Report. The appointment of Dominion delegates, though made on the nomination of the Dominion Governments, was made by the King himself, just as in the case of the delegates from Great Britain. The oversea possessions thus represented at Washington were Canada, Australia, New Zealand, India, and South Africa. The last-named Dominion, however, was represented by Mr. Balfour, and not by a representative specially sent from South Africa. It will be noticed that each Washington Treaty is signed twice by Mr. Balfour—once in his general capacity as representing Great Britain or the Empire at large, and again in his special capacity as representing South Africa. It is to be observed that the list of oversea possessions so represented at Washington is not identical with the list of self-governing Dominions. Newfoundland is a self-governing Dominion, but was unrepresented. India, though represented, is not a self-governing Dominion. It would appear difficult, therefore, to base on such a system of representation any conclusion as to the acquisition of a new international status by the self-governing Dominions.

The procedure of the Washington Conference was in itself a clear indication that the Dominions were there not in their own right as quasi-independent States, but merely as constituent portions of an undivided Empire. When any question came to be voted upon for the purpose of ascertaining whether there existed that unanimous consent which was necessary for a treaty, the question was put to the British Delegation as a whole, and was answered 'Yes' or 'No' by Mr. Balfour as the head and spokesman of that Delegation, and on behalf of the British Empire as a whole. Although in the process of discussion and negotiation the representatives of the Dominions had and exercised the same right of audience as any other delegates, they never voted separately on behalf of their own Dominion on any question. The final decision in every case was that of the British Empire as an indivisible unity.

The position of the Dominions at Washington was essentially different from the position which they occupy at an assembly of the League of Nations. By the special and peculiar organization of that body, self-governing colonies are admitted as members in their own right as if they were independent States. Although by constitutional and international law such colonies are merely constituent portions of the Empire to which they belong, they are entitled by express agreement to be treated, so far as practicable, as if they were independent.



But no such principle was recognized at Washington, or exists except for the special purposes of the League of Nations.

Although in its international aspect the British Delegation constituted a single body representing the Empire as an undivided State, it does not follow that in respect of the constitution of the Delegation and the relations of its members towards each other all of those members possessed an equal status or held co-ordinate authority. This, indeed, was not the case. An examination of the Letters Patent will show that a Dominion delegate is appointed to act only in respect of his own Dominion and not in respect of the Empire as a whole. The authority committed to the delegates from Great Britain is not subject to any corresponding limitation. Mr. Balfour, Lord Lee, and Sir Auckland Geddes were appointed *simpliciter* as the King's plenipotentiaries for all the purposes of the Conference. Their authority was general with respect to the whole Empire, and was not limited to Great Britain or to such portions of the Empire as were not separately represented. The British Delegation, therefore, did not consist of seven plenipotentiaries possessed jointly of co-ordinate and general authority. It consisted of three such plenipotentiaries, with whom were associated the four Dominion representatives, each of whom had authority in respect of his own Dominion only. The legal significance of this distinction is, as I understand the matter, that the Dominion delegates were present at Washington for the purpose of being heard and consulted as to all matters there in issue concerning the Empire, and of approving and confirming on behalf of their own Dominions the decisions of the King's general plenipotentiaries, and of testifying such approval and confirmation by signing on behalf of their own Dominions the treaties there negotiated.

The fullest opportunity was afforded to the Dominion delegates for the exercise of this right of audience and consultation, not merely by their presence at the plenary and public sessions of the Conference itself, and by their presence as members of the several committees in which the detailed negotiations proceeded, but also by the practice of holding repeated meetings of all the members of the British Delegation itself. At these meetings, of which there were no less than twenty-five during the period of the Conference, the Delegation associated with itself the chief technical advisers of the British Government. Full and free discussion took place as to all questions which had come or were likely to come before the Conference, and decisions were arrived at as to the policy to be adopted on behalf of the Empire at meetings of the Conference and of its committees.

These internal negotiations and discussions of the British Delegation proceeded throughout with the utmost harmony, and with the most ungrudging and courteous recognition on the part of the delegates from Great Britain of the right of the Dominion representatives to participate in the international policy of the Empire. No question

ever arose on which it was found impossible to secure ultimate unanimity of decision within the British Delegation. If unfortunately it had been otherwise, and if any Dominion delegate, either of his own motion or under the instructions of his Government, had found himself unable to agree to some proposal which commended itself to the Delegation, it would then have been necessary for His Majesty's general plenipotentiaries from Great Britain to determine in their own discretion the action to be taken. If they were of opinion that the matter in dispute was of such minor importance, or related so exclusively to the Dominion itself, that the views of that Dominion ought to be acceded to for the sake of unanimity, this result could have been attained either by a modification of the terms of the proposed treaty or by excluding the dissentient Dominion from its operation unless and until it chose through its Government or Parliament to give its subsequent adherence. If, on the other hand, it was considered that the matter was of such general importance that dissent on the part of a Dominion should be disregarded in the interests of the whole Empire, it would have been within the authority of the plenipotentiaries of Great Britain to assent to the treaty on behalf of the Empire as a whole, without regard to such dissent. The fact that the delegate of one of the British Dominions had failed to sign the treaty on behalf of that Dominion would have had no effect on the international operation and obligation of the treaty. Any difficulty so unfortunately resulting would have been a matter for negotiation and settlement within the borders of the Empire itself, but would have in no way affected the external relations between the Empire and the other contracting Powers.

No legislation is required in New Zealand for the purpose of giving effect to the Washington Treaties or Resolutions. The only legislative action required is that of the Imperial Parliament, which will presumably find it expedient to legislate as to the building of ships-of-war for foreign Powers, and as to the criminal liability of persons guilty of violating the rules laid down at Washington for submarine warfare. Legislation as to the first of these matters is needless in New Zealand, and legislation on the second would be beyond the competency of a colonial Legislature as being extra-territorial in its operation.

The Washington Treaties, like all others which are negotiated by plenipotentiaries, come into force only on ratification. The ratification required by the constitutional law of the British Empire is that of His Majesty. No action in New Zealand is legally required. In view, however, of the direct participation of New Zealand in the negotiation and execution of those treaties, it may well be thought expedient that the treaties should be submitted to both Houses of the New Zealand Legislature in order that resolutions may be passed approving of their ratification by His Majesty. . . .

*C. THE ESTABLISHMENT OF THE IRISH FREE STATE, 1921*ARTICLES OF AGREEMENT FOR A TREATY BETWEEN GREAT BRITAIN  
AND IRELAND, 1921*(British Statutes, 12 Geo. V, c. 4)*

1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace, order, and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State.

2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice, and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

3. The representative of the Crown in Ireland shall be appointed in like manner as the Governor-General of Canada and in accordance with the practice observed in the making of such appointments.

4. The oath to be taken by Members of the Parliament of the Irish Free State shall be in the following form:

I . . . do solemnly swear true faith and allegiance to the Constitution of the Irish Free State as by law established and that I will be faithful to H.M. King George V, his heirs and successors by law in virtue of the common citizenship of Ireland with Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations.

5. The Irish Free State shall assume liability for the service of the Public Debt of the United Kingdom as existing at the date hereof and towards the payment of war pensions as existing at that date in such proportion as may be fair and equitable, having regard to any just claims on the part of Ireland by way of set-off or counter-claim, the amount of such sums being determined in default of agreement by the arbitration of one or more independent persons being citizens of the British Empire.

6. Until an arrangement has been made between the British and Irish Governments whereby the Irish Free State undertakes her own coastal defence, the defence by sea of Great Britain and Ireland shall be undertaken by His Majesty's Imperial Forces. But this shall not prevent the construction or maintenance by the Government of the Irish Free State of such vessels as are necessary for the protection of the Revenue or the Fisheries.

The foregoing provisions of this Article shall be reviewed at a conference of Representatives of the British and Irish Governments to be held at the expiration of five years from the date hereof with a view to the undertaking by Ireland of a share in her own coastal defence.

7. The Government of the Irish Free State shall afford to His Majesty's Imperial Forces:

- (a) In time of peace such harbour and other facilities as are indicated in the Annex hereto, or such other facilities as may from time to time be agreed between the British Government and the Government of the Irish Free State; and
- (b) In time of war or of strained relations with a Foreign Power such harbour and other facilities as the British Government may require for the purposes of such defence as aforesaid.

8. With a view to securing the observance of the principle of international limitation of armaments, if the Government of the Irish Free State establishes and maintains a military defence force, the establishments thereof shall not exceed in size such proportion of the military establishments maintained in Great Britain as that which the population of Ireland bears to the population of Great Britain.

9. The ports of Great Britain and the Irish Free State shall be freely open to the ships of the other country on payment of the customary port and other dues.

10. The Government of the Irish Free State agrees to pay fair compensation on terms not less favourable than those accorded by the Act of 1920 to judges, officials, members of police forces, and other public servants who are discharged by it or who retire in consequence of the change of government effected in pursuance hereof.

Provided that this agreement shall not apply to members of the Auxiliary Police Force or to persons recruited in Great Britain for the Royal Irish Constabulary during the two years next preceding the date hereof. The British Government will assume responsibility for such compensation or pensions as may be payable to any of these excepted persons.

11. Until the expiration of one month from the passing of the Act of Parliament for the ratification of this instrument, the powers of the Parliament and the Government of the Irish Free State shall not be exercisable as respects Northern Ireland and the provisions of the Government of Ireland Act, 1920, shall, so far as they relate to Northern Ireland, remain of full force and effect, and no election shall be held for the return of members to serve in the Parliament of the Irish Free State for constituencies in Northern Ireland, unless a resolution is passed by both Houses of the Parliament of Northern Ireland in favour of the holding of such elections before the end of the said month.

12. If before the expiration of the said month, an address is presented to His Majesty by both Houses of the Parliament of Northern

Ireland to that effect, the powers of the Parliament and Government of the Irish Free State shall no longer extend to Northern Ireland, and the provisions of the Government of Ireland Act, 1920 (including those relating to the Council of Ireland), shall, so far as they relate to Northern Ireland, continue to be of full force and effect, and this instrument shall have effect subject to the necessary modifications.

Provided that if such an address is so presented a Commission consisting of three persons, one to be appointed by the Government of the Irish Free State, one to be appointed by the Government of Northern Ireland and one who shall be Chairman to be appointed by the British Government shall determine in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographic conditions, the boundaries between Northern Ireland and the rest of Ireland, and for the purposes of the Government of Ireland Act, 1920, and of this instrument, the boundary of Northern Ireland shall be such as may be determined by such Commission.

13. For the purpose of the last foregoing Article, the powers of the Parliament of Southern Ireland under the Government of Ireland Act, 1920, to elect members of the Council of Ireland shall after the Parliament of the Irish Free State is constituted be exercised by that Parliament. . . .

16. Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as either directly or indirectly to endow any religion or prohibit or restrict the free exercise thereof or give any preference or impose any disability on account of religious belief or religious status or affect prejudicially the right of any child to attend a school receiving public money without attending the religious instruction at the school or make any discrimination as respects state aid between schools under the management of different religious denominations or divert from any religious denomination or any educational institution any of its property except for public utility purposes and on payment of compensation.

17. By way of provisional arrangement for the administration of Southern Ireland during the interval which must elapse between the date hereof and the constitution of a Parliament and Government of the Irish Free State in accordance therewith, steps shall be taken forthwith for summoning a meeting of members of Parliament elected for constituencies in Southern Ireland since the passing of the Government of Ireland Act, 1920, and for constituting a provisional Government, and the British Government shall take the steps necessary to transfer to such provisional Government the powers and machinery requisite for the discharge of its duties, provided that every member of such provisional Government shall have signified in writing his or her acceptance of this instrument. But this arrangement shall not continue in force beyond the expiration of twelve months from the date hereof.

18. This instrument shall be submitted forthwith by His Majesty's Government for the approval of Parliament and by the Irish signatories to a meeting summoned for the purpose of the members elected to sit in the House of Commons of Southern Ireland, and if approved shall be ratified by the necessary legislation.

(Signed)

On behalf of the British Delegation      On behalf of the Irish Delegation

D. Lloyd George.

Art Ó Griobhtha.

Austen Chamberlain.

(Arthur Griffith)

Birkenhead.

Michál Ó Coileain.

Winston S. Churchill.

Riobárd Bartun.

L. Worthington-Evans.

E. S. Ó Dugain.

Hamar Greenwood.

Seorsa Ghabháin Uí Dhu-

Gordon Hewart.

bhthaigh.

*December 6, 1921.*

## SECTION IV

### THE PERIOD OF DECENTRALIZATION, 1922-6

#### A. THE CHANAK INCIDENT, 1922

##### 1. THE 'INQUIRY' AND THE RESPONSE

###### (a) *The 'Inquiry'*

(*The London Times*, September 18, 1922)

An important statement on British policy in regard to the advance of the Kemalist Army was issued in London on Saturday.

'It declares that the approach of the Kemalist forces to Constantinople and the Dardanelles and the demands put forward by the Angora Government have clearly created a situation which has been continuously under the attention of his Majesty's Government during the last week. . . . It would be futile and dangerous, in view of the excited mood and extravagant claims of the Kemalists, to trust simply to diplomatic action. Adequate force must be available to guard the freedom of the Straits and defend the deep-water line between Europe and Asia against a violent and hostile Turkish aggression. . . . It is the duty of the Allies of the late war . . . to secure the orderly and peaceful conditions in and around the Straits which will allow a conference to conduct its deliberations with dignity and efficiency and so alone reach a permanent settlement.

'His Majesty's Government are prepared to bear their part in this matter and to make every possible effort for a satisfactory solution. They have addressed themselves in this sense to the other Great Powers with whom they have been acting. . . . His Majesty's Government have also communicated with the Dominions, placing them in possession of the facts and inviting them to be represented by contingents in the defence of interests for which they have already made enormous sacrifices and of soil which is hallowed by immortal memories of the Anzacs.'

###### (b) *The Response*

(1) *Montreal Gazette*, September 18, 1922

Almost eight years after the first Canadian division sailed from Quebec to participate in the war against Germany, a Canadian Government is called upon to consider what shall be Canada's attitude toward the grave situation which has arisen in the Near East. Premier King, who returned to the capital this morning after his visit to Kitchener, and to his own constituency of North York, has called an extraordinary meeting of the available members of his

cabinet to discuss the difficult problem now brought before the Government and the Dominion. . . .

The cabled report that Great Britain had invited the overseas Dominions to contribute military contingents to aid in maintaining the neutrality of the Dardanelles, came as a shock to circles in Ottawa in which the seriousness of the Near East situation had not been realized. It has not been indicated to what extent the Dominion's assistance is required nor is it clear as it was in 1914 what is the sentiment of the Canadian people toward the latest development in south-eastern Europe. The Cabinet, therefore, will face a difficult problem when it meets to-morrow. It will have to consider the possible consequences of involving the Dominion, now recovering from the effects of the last war, in new military operations in the Near East, and the consequences of declining to do so. Should the ministry conclude that Canada's position as a nation within the Empire places upon her an obligation to dispatch troops to the Dardanelles, it will have to determine the strength and character of the expedition. The Government, too, is drawn from and supported by a party, a large element of which has ever been reluctant to see the Dominion drawn into European controversies. Some there are in Ottawa, who believe that the members of the Cabinet would hesitate to risk the moral effect, at home and abroad, of a flat refusal to take any part in the defence of the neutral zone of the Dardanelles. Others are inclined to think the ministry will make haste slowly. What information regarding the situation and its needs the Government possess no one outside the circle of the Privy Council knows. If the ministers feel they do not possess sufficient information to determine their course immediately, they may possibly decide to avail themselves of the presence of Hon. W. S. Fielding and Hon. Ernest Lapointe in Europe to secure further confidential data.

(2) The Government's Reply, *Toronto Globe*, September 19, 1922

At 11.30 to-night (September 18), after the night sitting of the Cabinet, the Prime Minister announced that the Dominion Government had received a reply from Premier Lloyd George to the effect that the former was not at liberty to make public the text of the British invitation, but that the substance of it might be given out. It is as follows:

'This official message is a statement of the action taken by the British Cabinet on September 15, and it asks whether the Dominion Government wishes to associate itself with the action the Imperial Government is taking, whether Canada would desire to be represented by a contingent.'

Canada's reply to this message, which was drafted at to-night's Cabinet meeting and cabled immediately to London, is as follows:

'It is the view of the Dominion Government that public opinion in



Canada would demand the authorization of Parliament as the necessary preliminary to the dispatching of a contingent to participate in the conflict in the Near East. We would welcome the fullest information possible, in order to decide upon the advisability of summoning Parliament.'

'Such information as we have', the Prime Minister stated to the Press to-night, 'is of a wholly reassuring character.' Much of this has been received this evening from Hon. W. S. Fielding and Hon. Ernest Lapointe, Canada's representatives at Geneva.

The feeling of the Government, it is understood, is that the situation in the Near East does not now, and is not likely to, call for any military participation by Canada. However, if an unforeseen and large emergency should arise, the people of Canada, through their Parliament, which would be specially summoned, will have the fullest opportunity to express their desire.

(3) Criticism by the Leader of the Opposition, *Montreal Gazette*,  
September 23, 1922

A declaration that he would support the King Government in any step that would make clear to the world the solidarity of the British Empire, so far as Canada is concerned, in handling the Near Eastern question, featured the speech of Right Hon. Arthur Meighen, former Premier of Canada, before the Toronto Business Men's Conservative Club to-day. . . .

Mr. Meighen said that one of the greatest achievements of the war was the neutralizing of the Dardanelles, taking them away from the Turk, who had dragged a bloody trail on both continents for many years, and handing them over for the peaceful purposes of many nations.

When a new party arose, denied the treaty, and threatened Europe, Britain found it necessary to raise her hand and say, 'Only this far shall you go.'

'Britain taking this stand', Mr. Meighen added, 'sends messages to her dominions, not a mere indifferent formal inquiry, if we can judge the evidence, but an appeal for co-operation. New Zealand and Australia replied at once, and the British Government, in a message of thanks to these two countries, a message in which Canada was not included, expressed its heartfelt gratitude on behalf of the British people.

'Out of this crisis arises the question that is to-day foremost in the minds of the people. Where should Canada be found when the Motherland asks her to take a stand in defence of a treaty, and a treaty which is not only hers, but ours?

'Much hangs on the decision of the present Government within the next few days, and on this question of the action of Turkey depends not only our place in the world, but also the influence of the British Empire for good in the world. There are some who talk as if Britain were not a co-partner and friend, but one of our chief antagonists and a designing mistress, but the great majority have the same unwavering faith in the mission of the British Empire. . . .

'Britain', continued the speaker, 'is not prepared to surrender that prize of victory because she wishes to secure that the future may belong to peace and not to war. She sends a message to the dominions, not a mere indifferent inquiry as to what was the mind of Canada, but a message to see if the dominions were solid behind the Motherland. Let there be no dispute as to where I stand. When Britain's message came, then Canada should have said: "Ready, aye, ready; we stand by you." I hope the time has not gone by when that declaration can yet be made. If that declaration is made, then I will be at the back of the Government.'

When the cheering which greeted this statement of policy had subsided, the ex-Premier continued:

'Can anyone divine what is to be the result of a policy by which we determine for ourselves whether or not we leave to Britain, or share with her, the defence of treaties, to which the honour as well as the signature of this country is pledged? Can anyone divine where it is going to lead us, or what will be the effect of the procrastinations of this week we are passing through? By any consequences of my decision I am prepared to stand. . . .'

## 2. NEWSPAPER COMMENT

### (a) *Montreal Gazette*, September 18, 22, 1922 (editorials)

*September 18* . . . What about the Dominions if the worst comes to the worst? It is reported that Great Britain has invited the Dominion to join in the defence of Constantinople and the Dardanelles, and if the report be true a grave situation is presented. The Canadian Government is not apt to respond until Parliament has been consulted. Very different, moreover, is the case of keeping the Turks out of their capital from that of defending Great Britain from the wilful aggression of Germany; and while Canadians will not hesitate to give their utmost aid to preserve the Empire, they may pause before embarking in a cause remote in interest, not of their concern, and only contingently touching the integrity of the Empire. We have had enough of war, and without adopting the pusillanimous policy of peace at any price, Canadians may reasonably require to be shown that conciliation cannot be obtained by concession and that the Empire is menaced, before they make sacrifice. If then sacrifice becomes duty, it will be unstintingly made. Again, it may be that the British Government has merely requested that a small contingent of Canadian troops be sent across to typify the unity of the Empire, as the European Allies will be able to handle Turkey unless the conflagration spreads.

*September 22* . . . Canadian opinion towards the enquiry of Lloyd George whether the Dominion desires to associate itself with Great Britain in defence of the Dardanelles can hardly be said to have yet been formed. There is confusion of the issue. Two things, we believe, stand out clear and certain: first, that every effort should be exerted to maintain peace, and, secondly, that if the Empire needs our aid

that aid will be given. Blood is thicker than water, and sentiment stronger than parchments. Canada is supposed to have attained the stature of a nation from its participation in the Great War, but Canada remains in and of the Empire, and when Great Britain is at war Canada is at war, even though the seat of conflict is so remote as to give her immunity from attack. Canada is a party to the Treaty of Sèvres which provided the partition of Turkey, and the Canadian Parliament has ratified that instrument, but not much importance need be attached to that fact since the Turks have not accepted the Treaty, and other signatory Powers are not standing behind it. But if Britain needs our help it will be given; theirs not to reason why. 'Not one penny, not one man', is not the attitude the people of Canada will take should a grave emergency threatening the existence of the Empire arise; but we may still fervently hope that no rash act of politicians will precipitate an avoidable conflict, and that a settlement will be reached by negotiation in which France and Italy will participate, for we can conceive no greater calamity than the withdrawal of the bolt binding the Allies in the late war, followed by a conflict in the Near East that might extend over two continents.

(b) *Manitoba Free Press*, September 20, 1922 (editorial)

The despatches from London during the past few days have indicated a very bad case of nerves on the part of the British government following the Greek rout in Asia Minor. The London *Daily Mail* has been talking about the 'insanity' of the government's policy as indicated by the course being followed. The tone of the later despatches is much milder and it is now suggested that the earlier reports of impending war between the Christian and Moslem world, with the British Empire in the foreground of the battle, were much more highly coloured than the circumstances warranted. But in any case there is no reason why at this remove from the scene of the trouble Canada should not remain quite cool.

If it is the case that in the first stages of the excitement the British Government broadcasted messages to the various Dominions seeking, in effect, to commit them to participation in advance to a conflict, the nature, course, direction, and intention of which must necessarily be unknown to them, it went far beyond anything which the situation, as it had then developed, justified.

As for the governments of the Dominions, they would be justified in objecting to being the recipient of hurry-up messages of this kind creating situations for them of extreme domestic difficulty. These governments can only move with public opinion and to ask them to decide, while the telegraph messenger waits in the ante-room for the return message, to commit the resources of their countries and the lives of their citizens to a war on the confines of Asia and Europe, arising they know not how and directed to ends not clearly defined,

is to demand something from them that properly they have not the power to give. So far as Canada is concerned this is a question for the Canadian Parliament; and before it could give the question any measure of consideration it would require to be very explicitly informed as to all the circumstances leading up to the present situation; and just why Canadian soldiers should take up the task of keeping the Turks out of Constantinople (which is under the Treaty of Sévres, the capital of Turkey), and of maintaining a free passage-way from the Aegean to the Black Sea. These are ends of some importance, presumably, to Europe; but the continental nations—France, Italy, Jugo-Slavia, all signatories of the Treaty of Sévres—apparently do not think the situation calls for any immediate military action, even preparatory in its nature. Under these conditions we over here are not called upon to become wildly excited at this stage.

The most important newspaper of India—*The Times of India*, published in Bombay—deprecates these 'semi-sentimental appeals' to the Dominions by the British Government—for the purpose, presumably, of adding weight to its diplomatic representations. But they are open to even more serious objections than this. They are capable of being interpreted as attempts to seize occasions for furthering the doctrine that the Dominions have a moral responsibility to aid in repairing every mishap which may attend British operations in areas of the world in which we have no direct interest whatever. The Asia Minor catastrophe is the crowning achievement of post-war European diplomacy; and the responsibility for it is widely distributed. Canadians are not competent to allocate that responsibility; but most certainly they are not called upon as a matter of course to share it, and assume without question their share of the consequences. No one can foresee the future; and there might be conceivably world developments as the ultimate result of the criminal mishandling of the Turkish question by the diplomats of Europe in which we would be involved. But as things appear to stand at this moment the Dardanelles and Constantinople are not issues affecting us; and the British Government went beyond the needs of the situation and its rights under certain conditions to approach the sister nations for support in making this demand—for that, in effect, was what it is—upon the governments of the Dominions.

### 3. ACCOUNT BY THE CANADIAN PRIME MINISTER OF THE CHANAK INCIDENT

(*Canadian House of Commons Debates*, February 1, 1923, pp. 30-3)

Right Hon. W. L. MACKENZIE KING (Prime Minister): . . . Perhaps I had better give to the House immediately, as nearly as I can, the substance of the dispatch which was received, and then I will give

the House the substance of the communication which I sent after seeing its context. The dispatch was to the effect that the British Cabinet had decided to resist Turkish aggression upon Europe, and to make exertions to prevent the Allies being driven out of Constantinople by Mustapha Kemal, and in particular and above all, to maintain the freedom of the Straits by securing firmly the Gallipoli peninsula. The French Government, it was stated, had notified the British Government that they were in agreement with the British Government in informing Mustapha Kemal that he must not violate the neutral zone by which the Straits and Constantinople were protected, and had so instructed their High Commissioner at Constantinople. It was also stated that the Italians were in general accord. It was mentioned that the Government of Great Britain was addressing itself to Roumania, Serbia, and Greece with a view to securing their military participation in defence of the deep-water line between Europe and Asia.

It was further stated that the British Government were notifying all the Powers aforesaid of their intention to make exertions, and that they were placing a British division under orders to reinforce Sir Charles Harington, the allied commander-in-chief at Constantinople; that the British navy would co-operate, that these arrangements were intended to cover the period which must elapse before a stable peace with Turkey could be secured; that for this purpose a conference was being proposed probably at Venice, possibly at Paris, and that it was essential that the Allies should be strong enough to maintain their position at Constantinople and round the Straits until this peace had been achieved.

It was further stated in the dispatch that the British Government did not think it was likely that the forces of Mustapha Kemal would attack if a firm front were shown by any large number of Powers acting together. Mention was made of the fact that the total forces were estimated between sixty and seventy thousand men, who thus far had not encountered any serious resistance.

Mention was made of one or two other matters which, if the House had the privilege of seeing the correspondence, it would, I think, regard in the circumstances as being necessarily confidential. The dispatch contained one paragraph which I think may be regarded as the vital and essential one. It was to the effect that the British Government would be glad to know whether the Dominion Government wished to associate themselves with the action the British Government were taking, and whether we would desire to be represented by a contingent. I wish to draw the attention of the House to these particular words, because they constitute the vital part of the dispatch. The inquiry was—and I use the word inquiry because it has been used by the late Prime Minister of England, Mr. Lloyd George, in referring to this particular passage—as to whether the

Dominion Government wished to associate themselves with the action which the British Government were taking and whether they would desire to be represented by a contingent.

Mention was also made in the dispatch of reasons why possibly some of the Dominions would particularly wish to be represented by a contingent. It was stated by Premier Smuts in addressing the Parliament of South Africa that his understanding of the communication was that it had been addressed primarily to Australia and New Zealand on account of their interest in the Gallipoli peninsula, and that its being subsequently sent to the other Dominions was due to the circumstance that the British Government having sent it in the first instance to these two Dominions, felt they should send it to all four. I am simply giving the House the statement which Premier Smuts has given to his Parliament as his interpretation of the dispatch.

There was a further reference to the effect that the announcement that any or all of the Dominions were prepared to send contingents would undoubtedly exercise a favourable influence on the situation, and might conceivably be a potent factor in preventing any actual hostilities. Mention was made of the fact that the dispatch was being sent to the different Dominions.

I am anxious, Mr. Speaker, that not only hon. members of this House, but the country as well, should have every reason to feel that nothing of significance contained in the dispatch is being withheld, and I therefore propose to hand it to my right hon. friend, the leader of the Opposition, who is a member of the Privy Council, and ask him to peruse its contents and satisfy his mind that I have in every particular given to the House what is essential in it. I should be happy if he would see his way, and I think it would be perfectly proper under the circumstances, to allow the hon. member for Brandon (Mr. Forke) who is leading an important party in this House, also to see the contents of the dispatch. I think that would not be violating any arrangement which the British Government would wish us to keep.

. . . May I say in reference to this dispatch, that this was the first and only intimation which the Government had received from the British Government of a situation in the Near East which had reached a critical stage, and with respect of which there was reason to anticipate the necessity of making any kind of appeal for military assistance. I want it to be clearly understood that nothing in the way of an official communication respecting a critical situation in the Near East was received by our Government from the British Government prior to our receipt of the particular dispatch of which I have just given the substance.

Receiving the dispatch in the manner described, I immediately sent a communication to His Majesty's Government somewhat along the

following lines: That before it was possible to have the contents of the cable which had come from London communicated to myself or other members of the Government the press of Canada carried dispatches from Great Britain announcing an invitation by the British Government to Canada to participate in resistance of Turkish forces by sending a contingent. I pointed out that a most embarrassing situation had arisen in consequence, that I was being asked by press representatives if any communication, and if so what communications, had been received from the British Government. As the message from Great Britain had been marked secret and was in cipher, I was not at liberty to disclose its contents and I asked if the British Government would cable immediately stating their wishes in the matter, and whether I was at liberty to disclose the contents of the communication in whole or in part, and if not, what communication the British Government desired to have made public as coming from them. I concluded the dispatch by saying that our Parliament would certainly wish to have copies of all official correspondence in this matter brought down. I asked the British Government clearly to indicate, as regards communications, which they might send, what, if any, should be regarded as not coming within the sphere of publicity. I felt that a request for the correspondence was a most natural and proper request, and would be made as soon as Parliament assembled, and it was my desire that if possible this document and others which might pass should be given the fullest publicity. For this reason I endeavoured at the very outset—as soon as I saw the dispatch on the Sunday morning, the day following its receipt at Ottawa—to make it quite clear to the British Government that as soon as Parliament met the Government would be confronted, as it has been this afternoon, with a request for publicity in the matter of all dispatches, and that I would like the British Government to give their consent to have all the correspondence brought down. I was also anxious to give at the time the fullest publicity to the dispatch.

The reply I received to the part of the communication to which I have just referred, asking for permission to make the dispatch public, was to the effect that it was not suitable for publication textually. The British Government indicated that the substance of the dispatch might be given in a general statement, but expressed the hope that the dispatch itself would not be given publicity. I then gave the following statement to the press on Monday, September 18, at 6.30 p.m.

As already mentioned the only communication which our Government has thus far received with respect to the situation in the Near East from the British Government is a cable dispatch marked 'secret', the contents of which, without the consent of the British Government, we do not feel at liberty to make public. It is the view of the Government that public opinion in Canada would demand authorization on the part of Parliament as a necessary preliminary to the dispatch of any contingent to participate

in the conflict in the Near East. The Government is in communication with members of the cabinet at present in Europe as Canada's representatives at the League of Nations, and with the British Government, with a view to ascertaining whether the situation that exists in the Near East is one which would justify the summoning of a special session of Parliament.

I informed the British Government that our Cabinet would hold daily sittings, if necessary, that we would be pleased to receive the fullest information; in particular that we wished to be informed whether in their opinion it was desirable that the Canadian Parliament should be called to consider this important matter. The reply which was received to this communication was to the effect that the British Government saw no necessity for the summoning of Parliament.

I should have made mention earlier in this general statement of the nature of the reply sent by the Government in answer to the dispatch which was received. It was to the effect that as respects the sending of any contingent, it was our view that Parliament alone should authorize a step of the kind, and that we would be pleased to receive the fullest information in order to decide upon the advisability of summoning Parliament.

Hon. members will recall that for some days there was considerable uncertainty as to the outcome of events, and during that time the Government did not deem it advisable to press the British Government further in the matter of the publicity to be given to the dispatches, or for an explanation of the circumstances accounting for the issue of the circular press communication advising that Canada had been invited to send a contingent to the Near East before our Government had received the dispatch in question. However, when the crisis appeared to have passed, we did send a further communication to the British Government, asking if it were possible to have an explanation, and mentioning again our desire to give publicity to the communications that were received. A change of government came about that time in Great Britain, and the Government which succeeded the previous Government asked that they might have opportunity to give consideration to the matter before replying with respect to the request to make public any part of the correspondence. I have since received from the present Government in Great Britain a communication with respect to publicity, and it is along the line which I have indicated to my right hon. friend.

... I shall conclude, Mr. Speaker, by making mention anew of the words of the reply which was sent by our Government on the 18th of September in reply to the dispatch which came two days previously. After mentioning that the Cabinet had had under consideration the representations of the dispatch received, it was stated that it was the view of the Government that public opinion in Canada would demand authorization on the part of Parliament as a necessary preliminary to the dispatch of a contingent to participate in the conflict in the Near



East; that we would welcome the fullest possible information in order to decide upon the summoning of Parliament.

In this somewhat hurried manner, I have not, I regret, been able to give the House as much in the way of information as I should like to have been privileged to give; if there has been any reserve or reticence, it has been due solely to the endeavour to maintain the obligation of secrecy which has been imposed upon us in virtue of the character of the communications that have been received. As regards the part which our Government has taken in this matter, I would say to my right hon. friend (Mr. Meighen) that we have felt and feel very strongly that, if the relations between the different parts of the British Empire are to be made of an enduring character, this will only be through a full recognition of the supremacy of Parliament, and this particularly with regard to matters which may involve participation in war. It is for Parliament to decide whether or not we should participate in wars in different parts of the world, and it is neither right nor proper for any individual or for any group of individuals to take any step which in any way might limit the rights of Parliament in a matter which is of such great concern to all the people of our country.

#### 4. CHANAK

(John W. Dafoe in *Manitoba Free Press*, August 3, 1925)

The theory of Empire government by means of the Imperial Cabinet, as defined by Mr. Hughes to the Australian Parliament, was tested and destroyed by the Chanak episode of September 1922. That incident, which seemed so amazing to contemporary British opinion and viewed in retrospect has so bizarre an appearance, was a full-dress 'try-out' of the new system by its designers, Mr. Lloyd George and Mr. Churchill, of Great Britain; Mr. Massey, in New Zealand; and Mr. Hughes, in Australia. The British members of the combination having given the signal, their Australasian colleagues came back with the required automatic reply; whereupon they waited for the instantaneous rallying behind them of all the peoples of the Empire. Which did not come. Instead, Canada explicitly declined to 'play up' to the lead given her; South Africa marked time in a mood of masterly inactivity; Anglo-Indian opinion as expressed by the British newspapers of India was hostile and alarmed; while in Great Britain it needed but this further adventure to crystallize the general feeling that the country would be better served by a more sober-minded administration. Lloyd George fell and Bonar Law came in, pledged to a régime of 'tranquillity'.

Political dissensions in Great Britain attendant upon the destruction of the Coalition Government provided the revelation that the cablegram to the Dominions summoning them—though in form, of course, the summons bore the guise of an invitation—to a 'new

conflict was not the considered policy of the British Government; still less did the perfervid manifesto given to the world through the agency of the press bureau, in which participation by the Dominions in any war that might grow out of the threatening situation along the Straits was accepted as a certainty, expound the agreed-upon views of the Government of Great Britain. These were the work of a section of the Government: that section, in fact, whose members regarded themselves as also members of the 'Imperial Cabinet'—in the terms of Lloyd George's definition to the British Parliament in 1918, 'the Prime Minister of the United Kingdom and such of his colleagues as deal specially with Imperial affairs'. When the call sent out by these members of the 'Imperial Cabinet' in Great Britain came to them, their colleagues in New Zealand and Australia knew what to do. No consideration was necessary; no consultation with any one was required; under the procedure agreed upon, the reaction to the call must be automatic. Therefore, Mr. Massey, who got his cablegram at a public function, sent his instant acceptance of the 'invitation', while Mr. Hughes acted with almost equal precipitation, not tarrying to ask the consent of Parliament, which was sitting at the time. Owing to time differences or perhaps to the order in which the cablegrams were sent out, the Canadian Government learned of the summons and of New Zealand's acceptance from the public press before its own message was decoded.

In a discussion in the Australian Parliament in the following July, there were some enlightening statements as to the reasons for Australia's promptitude in accepting the summons. Mr. Bruce, the new Prime Minister, after referring to the Chanak incident as 'that most unfortunate episode' went on to say:

I do not propose to traverse the history of that incident, but I certainly have no hesitation in saying that it was a most unfortunate action that was taken by the British Prime Minister of the day. That action having been taken by the British Prime Minister, no course was open to Australia but to stand up to her obligations.

Mr. Hughes, taking part in the debate, referred to 'the trouble that occurred in September of last year when we were pushed, willy-nilly, to the very edge of the arena of war'. 'We were', he said further, 'so nearly engulfed by the maelstrom of war that but for a miracle we should have been drawn down.'

That is to say, the action of the British Prime Minister was 'most unfortunate' but it bound Australia to a parallel course of action to be entered upon 'willynilly' even though it 'engulfed' the country in an undesired war. This was the 'Imperial Cabinet' idea in operation—the decision being made in Great Britain and the Dominions being bound by the membership of their premiers in the Cabinet. Of course, there was the imparting of antecedent 'information'

though it was beyond question that no Dominion Government had received any information that in the least prepared it for the alarming cablegram of September 16. This was explicitly stated to the Canadian Parliament by Premier King.

When the Canadian Government, instead of replying 'Ready-aye-ready' to the cablegram, demanded further information and declared that no decision could be reached until Parliament was consulted, the scheme of government of the Empire by an Imperial Cabinet broke down, South Africa contributing to this end by a judicious marking of time made possible by General Smuts' opportune absence in the wilds of Zululand. Nor was it possible later to revive the theory, though some tentative efforts in this direction were made during the next year. The possible mischances of such a system had been too clearly revealed. Had it operated in September 1922 with the precision expected by its fashioners, the people of Great Britain might and probably would have found themselves involved in a war to which they were opposed; with the Dominions committed by the act of the Prime Minister of Great Britain to a course of action which would have been repudiated by the people the moment they could set the necessary constitutional machinery in motion. A superficial appearance of political unity, thus obtained, would have done incalculable damage to the moral unity which is the real strength of the Commonwealth. These dangers were narrowly escaped: in retrospect, they are so clearly seen that there is no possibility of further Imperial adventures in the spirit of the Chanak episode.

#### 5. AUSTRALIA AND CHANAK

*(Australian House of Representatives Debates, July 24, 30, 1923, pp. 1481-4, 1775-8)*

*(July 24.)* Right Hon. STANLEY M. BRUCE (Prime Minister): With regard to the foreign policy of the Empire, I have no hesitation in saying that the position is quite unsatisfactory. If we accept the axiom that wars arise from foreign policy, and that Australia is inevitably involved whenever Britain is involved, it is clearly demonstrated that we should insist upon having some proper voice in framing that foreign policy. The importance of this was realized at the Conference of 1921. Mr. Hughes, then Prime Minister of Australia, stressed that view more than anybody else, and it was owing to his representations, to a great extent, that action was taken to endeavour to evolve a method of keeping the Dominions informed of the proposals of the Imperial Government. The decision was reached that the Dominions should be regularly advised by the British Government on all matters of foreign policy, particularly those which might involve the Empire in war. The principle was laid down at that Conference that the Dominions must be kept fully informed, especially

when the peace of the Empire was involved. The British Government undertook to supply information regularly to the Prime Minister of each Dominion, and it has done so. Unfortunately, the system has not proved quite satisfactory. The Dominion Governments have received information of the actions the British Government proposed to take in the realm of foreign policy, but almost invariably it has arrived concurrently with, or only a few hours ahead of the time of its appearance in the public press. That was almost inevitable. Honourable members will realize that questions involving foreign policy would probably be under the consideration of the British Government for quite a long period, but, a decision having been reached, it is usually essential to translate that decision into immediate action. Many of the questions on which we have received information have, undoubtedly, been under the consideration of the British Cabinet for a considerable period. The reasons which have swayed that Cabinet from day to day in coming to the decision it finally reached and communicated to us have not been available to us. It would be impossible for them to be available. The result is that though we have been kept informed of what has occurred, we get no information that will permit us to express our views and opinions and affect the decision reached. That has been the result of the present system. We had a practical illustration of it in that most unfortunate episode which occurred last year in connexion with Turkey, when Australia was brought to the brink of war. I do not propose to traverse the history of that incident, but I certainly have no hesitation in saying that it was a most unfortunate action that was taken by the British Prime Minister of the day. That action having been taken by the British Prime Minister, no course was open to Australia but to stand up to her obligations, and I make no apology for the action that the last Commonwealth Government took. It was a proper action, and probably the promptness with which it was taken prevented war occurring. The situation, however, was one that should never have arisen, and it is one that we should take all pains to prevent from arising in the future. . . .

Another suggestion to which prominence has recently been given is that the Dominions should have a resident Minister in Great Britain; but to this many objections have been raised. It is argued that if a Minister went from Australia to Great Britain, he would very soon lose touch with Australian feeling and Australian sentiment; his vision would probably get clouded by the environment in which he would find himself at the other end of the world. In any case, he would be useless unless we gave him power to bind the Australian Government and the Australian people. That is a power which no Government or Parliament would confer on any individual. It has also been argued that if such a Minister were in Britain, and a decision were come to in a crisis where immediate action was

necessary, Australia would be bound by the fact that her Minister was there, even if he dissented from the decision, and refused to take any responsibility. As to this third objection, I do not think it a tenable one. We should be no more bound because our Minister happened to be in Britain than we would be otherwise, particularly if he had actually dissented from the decision arrived at. After giving this matter full consideration, and with a full appreciation of all the difficulties, the Government believe that, although not an ideal solution, something material would be achieved if we had a resident Minister in Britain, provided that that Minister's term of office was a very limited one. I shall be interested to hear the expressions of opinion by honourable members in regard to the suggestion.

If Australia consented to such an appointment, it could be only on the condition that the Minister had the status necessary to enable Australia to be given all information regarding questions arising from time to time, and that his position was such that he could exercise material influence in their settlement. If a Minister went there without the status necessary to give him such authority, I am quite sure the appointment would be useless. If, however, Great Britain were prepared to give him that status, then I believe a Minister in Great Britain would prove of very material advantage. I should like to point out to honourable members how a resident Minister would be able to do what it is quite impossible to have done at the present moment. A resident Minister, with access to the Cabinet and Cabinet documents, who would be consulted on all questions involving the interests of the Empire as a whole, or of Australia, would know from time to time exactly how any given position was developing. He would be able to inform and get the instructions of his Government, while the matter was under consideration, whereas at the present time we are not consulted in any way until a course of action has been finally decided. That would be a very great advance, which would give us some real voice in foreign affairs. But a resident Minister is not all that would be required. There must be regular and more frequent Imperial Conferences, and biennial meetings ought to be laid down as a principle. It is not necessary that these Conferences should always be held in Britain. It is worth considering whether they could not at times be held in the Dominions; but that is a matter which can be considered and arranged later. What is imperative is that these Conferences shall be held at frequent intervals, and that by them the foreign policy of the Empire shall be considered, and its principles laid down. There is no reason why, at the forthcoming Conference, an Empire foreign policy should not be agreed to by the Government of Great Britain and the Governments of all the Dominions. The League of Nations, reparations, and the affairs of Russia, Mesopotamia, Egypt, and the Pacific—all the great outstanding questions of to-day—could be considered and a policy laid down, to be departed

from by Great Britain only after consultation with the Dominions. If, in addition to laying down a policy, which would be reviewed at every Conference, there was a resident Minister in Britain to keep the Dominion Governments advised of developments from time to time, if we had opportunities to consider any question when it arose, I believe we should have gone a long way towards providing a better basis for an Empire foreign policy. The Prime Minister of Great Britain could enunciate, as he does from time to time, Britain's Empire policy; and if that policy were endorsed by the Prime Ministers of all the Dominions, then, I think, the people of Australia, and the Dominions generally, would realize that they had some influence on foreign affairs. But if we must take our share in the framing of the foreign policy of the Empire, it is essential that the peoples of the different Dominions should be more fully informed on the great questions with which they will be concerned. . . .

Another question to be considered and decided is the right of the Dominions to make treaties on their own account. This is a matter of the most vital importance to the future of the Empire. The Empire is one and indivisible. If the Dominions, without consultation with the other Dominions or with Britain, make treaties on their own behalf, which might, under certain circumstances, involve the Empire as a whole in war, there will arise an intolerable position. But if the question is considered at the forthcoming Conference, and it is possible to lay down a basis for a true Empire foreign policy acceptable to all the Dominions, I think the claim of certain Dominions to make their own treaty arrangements will disappear. . . .

(July 30.) Right Hon. W. M. HUGHES (Leader of the Opposition): Our right to a voice in the moulding of foreign policy is as clear as is our right to govern ourselves in domestic matters. On that subject there is no difference between Britain and the Dominions. Nor is there any denial of our right to be informed regarding the progress of those events upon which foreign policy has to be based. The right honourable gentleman (Mr. Bruce), indeed, admitted so much when he said that, notwithstanding these facts, there was still something lacking. There is, indeed, very much that is lacking. For, although we are informed of what goes on, the information usually comes too late to be of use. He referred, by way of example, to the trouble that occurred in September or October of last year, when we were pushed, willynilly, to the very edge of the arena of war. It is unfortunate that he did not make the facts quite clear to the House and to the country. He could have done so had he quoted from my telegrams to the then Prime Minister of Great Britain. He has rightly said that there was nothing that we could have done except what we did. I agree with him entirely that, when Britain is at war, we are at war. It is, however, necessary to say that this view is not entertained by all of the Dominions. The right honourable gentleman has said that

it is immaterial whether we, by any act or word, declare ourselves at war or do not; if Britain were at war, an enemy would not draw nice distinctions in our favour. Other nations hold Britain to be, as it were, our overlord, involving us in war or peace at will. Since the right honourable gentleman has expressed the desire for the fullest publicity for communications between Britain and ourselves in relation to such matters, in order that the people of this country may, by feeding upon this pabulum, be educated in foreign affairs, I regret that he did not think it proper to make available the communications which were sent by me to the ex-Prime Minister of Great Britain. They would inform the people of this country of the position in which we were placed, and the views of the Government in regard thereto. We were, indeed, so nearly engulfed by the maelstrom of war, that but for a miracle we should have been drawn down. What happened last year may happen again. Therefore, when the right honourable gentleman says that the conditions are not satisfactory, I entirely agree with him. It is not there that I join issue with him, but as to the remedy that he proposes to apply. The difficulties in regard to foreign policy arise entirely out of our geographical and other circumstances. . . .

The only Imperial instrument of government is the Imperial Cabinet, a body of which our Prime Minister is a member equally with the Prime Minister of Great Britain. Therefore the equality of the Dominions with Great Britain in the government of the Empire has, so far as human power can secure it, been recognized. The representatives of the Dominions and of Great Britain are to meet annually, and the Dominions are to be kept regularly informed of what is passing in foreign affairs. The right honourable gentleman has suggested the appointment of a Minister to reside in London, and although he did not say so, he submitted in support of it answers to arguments that I have used at various times. Such representation as he suggests, must, in the nature of things, fall far short of what is necessary. The right honourable the Prime Minister has said that such a man, if attached to the Imperial Cabinet, could do vitally important work. If that be so, there is no need for the right honourable gentleman to proceed to London. A Minister can be appointed at any time the right honourable gentleman decides, and he can proceed to London, there to express his opinions whenever questions affecting foreign relations or Imperial concerns may be under discussion. He would be as much a Minister of the Crown as any other Minister of the British Cabinet. Members of the British Cabinet would be called together when purely domestic matters were being considered, and our resident Ministers summoned whenever foreign policy or Imperial matters were to be discussed, together with such British Ministers as the Prime Minister of Great Britain might think proper to summon,

I have pointed out elsewhere what is fairly obvious, that an Australian Minister resident in London would soon get out of touch with Australian affairs. There is no environment in the world so fatal to the sturdy Democracy which characterizes this country as that of Downing Street. Unwittingly, our representative would begin to look on life from the English instead of the Australian standpoint. But, says the right honourable the Prime Minister, a resident Minister might be appointed for a short term! . . . If appointed for only a short term, before he got into his stride he would have to return to Australia. The proposition stands condemned for two reasons. If our Minister stayed in London for a long time he would become Anglicized, and if he remained only a little while his services would be of little use. . . .

There is only one way by which we can get control of foreign policy. That is, by such an improvement in the means of communication as set out in the resolution—such means as, in effect, will annihilate distance and bring us into touch with every part of the Empire. On the day when Downing Street can speak to the Government of this country, and tell us the events of the day—when the Prime Minister of the United Kingdom can consult with Canada, with South Africa, with India, and with New Zealand, and each can communicate with the others, then a foreign policy which has really been shaped by the Empire will be within reach, but until then it will not. . . . In a little while it will be possible to have the most improved telephone communication with Britain. Before long it will be possible for Downing Street to speak to Melbourne, and Melbourne to speak to South Africa and Canada. When that day comes it will be possible to get an understanding in regard to foreign policy, upon facts that are fresh, that have suddenly taken on themselves a shape menacing to us and to the world, and to deal with them. Until then nothing effective can be done.

*B. THE CANADIAN EFFORT TO SECURE MODIFICATION OF  
ARTICLE X OF THE LEAGUE COVENANT, 1922-3*

REPORT OF THE CANADIAN DELEGATES TO THE FOURTH ASSEMBLY  
OF THE LEAGUE OF NATIONS, 1923

*(Canadian Sessional Papers, 1924, No. 35, pp. 3-5)*

To His Excellency

Ottawa, December 1, 1923.

The Governor-General in Council:

The undersigned delegates appointed to represent Canada at the Fourth Assembly of the League of Nations have the honour to report as follows:

The Canadian delegates at the Peace Conference had taken exception to Article 10 (of the Covenant) and at the First meeting of the



League of Nations had proposed its elimination. The Article reads as follows:

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which the obligation shall be fulfilled.

The First and Second Assemblies considered the proposal but failed to reach any conclusion.

In 1922 Messrs. Fielding and Lapointe, after having satisfied themselves of the impossibility of securing the elimination of the Article, wisely suggested that it be allowed to stand with the addition of the following words:

taking into account the political and geographical circumstances of each State. The opinion given by the Council in such cases should be regarded as a matter of the first importance and should be taken into consideration by all the Members of the League who should use their utmost endeavours to conform to the conclusions of the Council; but no Member should be under the obligation to engage in any act of war without the consent of its parliament, legislature or other representative body.

This suggestion was considered by the Committee on Legal and Constitutional Questions, which made the following recommendation:

The Assembly of the League of Nations decides that the Canadian proposal with regard to Article 10 of the Covenant should be adjourned until the Fourth Assembly in order that the subject may be considered in all its bearings. The Assembly leaves it to the Council to decide on the steps to be taken to provide for a detailed study of the Canadian proposal before the meeting of the Fourth Assembly.

The report was adopted by the Third Assembly, and in January 1923 the Council, through the Secretary-General, addressed a written communication to all the Members of the League inviting an expression of their views as to the Canadian proposal.

Twenty-five replies were received from as many States and communicated to your delegates. An analysis of those replies, while indicating a wide variance of opinion as to the bearing of the Article, clearly showed that a large majority of the States were absolutely opposed to any change in the Article, and your delegates came to the conclusion that in the face of such opposition, no good purpose could be served by insisting upon the Assembly dealing with the matter in the form of an amendment.

On the other hand, after a careful survey of the situation, your delegates were inclined to believe that the Assembly might not be adverse to the adoption of a resolution defining the meaning of Article 10, and therefore bent their efforts in that direction.

When the matter was considered by the First Committee, Sir Lomer Gouin explained the Canadian point of view, insisting on the desirability of some answer being given without any further delay to those Members of the League who sought to be informed of the rights of the Council and of the obligations of the States under the Article.

The matter gave rise to a protracted discussion before the First Committee. Your delegates finally succeeded in securing the adoption of the principle of an interpretative declaration, and a sub-committee of jurists was appointed to draft a recommendation for submission to the Assembly.

The report of the sub-committee was as follows:

The Assembly, desirous of defining the scope of the obligations contained in Article 10 of the Covenant so far as regards the points raised by the Delegation of Canada, adopts the following resolution:

It is in conformity with the spirit of Article 10 that, in the event of the Council considering it to be its duty to recommend the application of military measures in consequence of an aggression or danger or threat of aggression, the Council shall be bound to take account, more particularly, of the geographical situation and of the special conditions of each State.

It is for the constitutional authorities of each Member to decide, in reference to the obligation of preserving the independence and the integrity of the territory of Members, in what degree the Member is bound to assure the execution of this obligation by employment of its military forces.

The recommendation made by the Council shall be regarded as being of the highest importance and shall be taken into consideration by all the Members of the League with the desire to execute their engagements in good faith.

The recommendation received the endorsement of the First Committee, and your delegates are pleased to report that on a vote being taken by the Assembly, it met with almost unanimous support since only one State, Persia, voted against its adoption and twenty-nine registered their approval of the Canadian proposal.

The States that voted in favour of the interpretative declaration are as follows:

South Africa, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chili, China, Cuba, Denmark, British Empire, Spain, France, Greece, Hungary, India, Irish Free State, Italy, Japan, Luxembourg, Norway, New Zealand, Netherlands, Portugal, Salvador, Sweden, Switzerland, and Uruguay.

While it is true that unanimity is necessary under the constitution of the League to give legal effect to a declaration of this nature, it nevertheless remains that, should occasion arise, the Council would be expected to give to Article 10 the interpretation which by its vote the Assembly has expressed. An additional guarantee is to be

found in the fact that all the powers represented on the Council are amongst those States who voted in favour of the interpretative declaration.

Your delegates feel that, under the circumstances, a satisfactory answer has been given to the question, and in this connexion desire to record their appreciation of the assistance they have received from the British Empire Delegates and the representatives of France, as well as of the courteous treatment accorded to them at all times by all the Delegates to the Assembly.

LOMER GOUIN.  
GEO. P. GRAHAM.

C. THE HALIBUT FISHERIES TREATY, 1923

CORRESPONDENCE REGARDING THE HALIBUT FISHERIES TREATY

(*Canadian Sessional Papers*, 1923, No. 111a, pp. 10-16)

*From His Majesty's Ambassador at Washington to the  
Governor-General*

No. 47.

British Embassy,  
Washington, D.C.  
February 12th, 1923.

MY LORD,—With reference to your dispatch No. 7—Secret, of the 23rd ultimo and to earlier telegraphic correspondence, I have the honour to inform Your Excellency that I have duly informed the United States Government of the modifications which the Canadian Government desire to make in the Draft Convention for the protection of the Pacific Halibut fishery, and I have notified the Secretary of State of the desire of your Ministers to conclude this Convention at the earliest possible moment.

I have the honour to add however that, having regard to the fact that the Treaty as signed will bear no title, its object being plainly expressed in the preamble of the document, I have, under instructions from His Majesty's Government, omitted from my note to Mr. Hughes modification No. 1 proposed by the Canadian Government, namely, the substitution in the title of the words 'the Dominion of Canada' for the words 'Great Britain'.

His Excellency,  
The Lord Byng of Vimy,  
G.C.B., &c., &c., &c.,  
Governor-General of  
Canada, Ottawa.

I have the honour to be,  
My Lord,  
Your Excellency's most obedient,  
humble servant  
(Sgd.) A. C. GEDDES.

*Copy of Code Telegram from the Secretary of State for the  
Colonies to the Governor-General*

*Secret.*

London, February 15, 1923.

Your telegram January 16th and Your dispatch January 24th,  
*Secret.*

Full Powers for Mr. Lapointe sent by mail February 13th.

As regards text of Draft Treaty, Secretary of State for Foreign  
Affairs suggests following modifications:

(1) Title of Treaty to be 'Convention for the Regulation of Halibut  
Fisheries on the Pacific Coast of Canada and the United States'.

(2) In accordance with the usual Treaty practice title of His  
Majesty preamble to read 'His Majesty the King of the United King-  
dom of Great Britain and Ireland and the British Dominions beyond  
the Seas, Emperor of India'.

Do your Ministers see any objection?

(Sgd.) DEVONSHIRE.

*From the Governor-General to the Colonial Secretary*

*Telegram.*

*Code.*

Ottawa, February 17, 1923.

Halibut Convention.

Modifications suggested in your telegram February 15th, concurred  
in by Canadian Government.

(Sgd.) BYNG.

*From the Governor-General to His Majesty's Ambassador at  
Washington*

*Secret.*

*Paraphrase of Cypher Telegram.*

Ottawa, February 21, 1923.

With reference to Your Excellency's secret telegrams of the thir-  
teenth and fourteenth instant, relative to the signing of the Halibut  
Convention, the Secretary of State for the Colonies under date the  
fifteenth instant, has telegraphed that full powers for Mr. Lapointe  
were sent by mail on the thirteenth instant. On receipt of these  
powers, Mr. Lapointe will leave for Washington. My Ministers are  
of the opinion that as respects Canada, signature of the treaty by  
Mr. Lapointe alone will be sufficient and that it will not be necessary  
for you to sign as well.

(Sgd.) BYNG.

*From His Majesty's Ambassador at Washington to the  
Governor-General*

*Secret.*

*Paraphrase of Cypher Telegram.*

Washington, February 23, 1923.

*Halibut Treaty.*—Modifications proposed in your telegram of January 16th are still being considered by United States Government. They expect, however, to give reply to-morrow. Until I am informed that the United States Government are ready to sign it would be preferable that Mr. Lapointe should not actually start. I have been instructed by His Majesty's Government to sign Treaty in association with Mr. Lapointe.

The above is answer to your telegram No. 7 of the 21st of February.

(Sgd.) GEDDES.

. . . . .

*Paraphrase of Cypher Telegram from the Governor-General of  
Canada to the Secretary of State for the Colonies*

*Very urgent.*

Ottawa, February 28, 1923.

*Halibut Treaty.*—The Full Powers issued to Honourable Ernest Lapointe in connexion with proposed convention with United States for protection of Pacific Halibut Treaty have been duly received and transmitted to Mr. Lapointe, who is at present on his way to Washington.

My Ministers are of opinion that, as respects Canada, signature of the Treaty by Mr. Lapointe alone should be sufficient. They proceeded on this assumption in asking for full powers for Mr. Lapointe. Having so notified the British Ambassador at Washington, it was with some surprise that an intimation was received from Sir Auckland Geddes to the effect that he had been instructed by His Majesty's Government to sign the Treaty in association with Mr. Lapointe. Evidently it has been assumed by His Majesty's Government that such was the wish of the Canadian Government. The view of my Ministers, however, is that the Treaty being one of concern solely to Canada and the United States, and not affecting in any particular any Imperial interest, the signature of the Canadian Minister should be sufficient, and they would respectfully request that His Majesty's Ambassador at Washington be instructed accordingly.

The Government of the United States having expressed a desire that the Treaty should be signed on the afternoon of Thursday, March first, in order to obtain ratification before the Senate rises on March fourth, it is most important that word should be cabled to Washington with the least possible delay. Sir Auckland Geddes has

been advised of this request. Kindly inform me, as soon after the receipt of this message as possible, of the action that may be taken by His Majesty's Government.

(Sgd.) BYNG OF VIMY.

*From the Secretary of State for the Colonies to the Governor-General Secret.*

*Paraphrase of Cypher Telegram.*

London, March 1, 1923.

With reference to your telegram of the 28th February regarding the Halibut Treaty. The wishes of your Ministers are being telegraphed to His Majesty's Ambassador at Washington by the Secretary of State for Foreign Affairs.

(Sgd.) DEVONSHIRE.

No. 82.

British Embassy,

Washington, D.C., March 9, 1923.

MY LORD.—With reference to Your Excellency's telegram No. 8 of the 28th ultimo and to previous correspondence relative to the Convention for the protection of the Halibut Fishery of the North Pacific Ocean, signed on the 2nd instant, I have the honour to transmit to Your Excellency herewith a copy of a note from the United States Government. In this note Mr. Hughes states that the Senate gave its consent on the 4th instant to the ratification of this instrument on the understanding that none of the nationals, inhabitants, vessels or boats of any other part of Great Britain shall engage in the halibut fishery contrary to the provisions of the said Convention.

Mr. Hughes expresses the hope that this 'understanding', which the Senate has made part of its resolution of ratification, will be accepted by His Majesty's Government.

The effect of this action on the part of the Senate is to widen the scope of the treaty so as to embrace the Empire as a whole, instead of Canada alone, to which it is understood the Dominion Government intended the Treaty to refer. In view of this development, a copy of the State Department note is being communicated to His Majesty's Principal Secretary of State for Foreign Affairs in order to ascertain the views of His Majesty's Government in regard to this 'understanding'.

Meanwhile I should be grateful if I might be furnished with any observations which Your Excellency may desire to offer on the subject.

I have the honour to be

My Lord,

Your Excellency's most obedient,  
humble servant,

(Sgd.) A. C. GEDDES.

His Excellency,

The Lord Byng of Vimy,  
G.C.B., &c., &c., &c.,  
Governor - General of  
Canada, Ottawa.

## D. THE TREATY OF LAUSANNE, 1922-4

I. EXPLANATION OF THE CANADIAN ATTITUDE BY THE PRIME MINISTER  
(*Canadian House of Commons Debates*, June 9, 1924, pp. 2923-34)

Right Hon. W. L. MACKENZIE KING (Prime Minister): Hon. members have had placed before them in printed form a copy of most of the communications that have passed between the British Government and the Canadian Government with reference to the Conference and the Treaty (of Lausanne). I had better direct the attention of the House immediately to the communication in which the Government was made aware of the holding of the Conference and the nature of the invitations which were extended to the Conference by the parties who had in hand the arrangements with reference thereto. The communication setting forth the essential facts in this regard will be found as the first in the return which has been brought down. It is dated London, October 27, 1922, and is from the Secretary of State for the Colonies, addressed to myself as Prime Minister of Canada. It is as follows:

(No. 1.)<sup>1</sup> Yesterday invitations were sent by the Governments of Great Britain, France and Italy to the Japanese, Roumanian, Yugoslav, Greek and Turkish Governments, 'both of Constantinople and Angora', to send representatives to Lausanne, November 13th to conclude treaty to end war in the East which will replace Treaty of Sèvres. Russian Soviet Government and Bulgarian Government also being invited to send to Lausanne, at any date to be fixed, representatives to take part in discussion on question of the Straits which the Conference will undertake at a later stage. Inquiry (?) is also being addressed by the three Governments to the United States expressing hope that they will permit United States representative to be present during Lausanne negotiations in a capacity similar to that in which United States representative was present during negotiations at San Remo in 1920, or to take more active part in the negotiations, specially on the question of the Straits. According to arrangements agreed upon with French and Italian Governments each Government would be represented at Lausanne by two plenipotentiaries. Secretary of State for Foreign Affairs will personally act as chief British plenipotentiary and it is proposed he should be accompanied by the British High Commissioner at Constantinople. Dominion Governments will be kept informed from time to time on the general lines of policy on which British plenipotentiaries propose to proceed and of course of negotiations and in case of other treaties arising out of the peace will of course be invited to sign new treaty and any separate instrument regulating the status of the Straits. His Majesty's Government trusts that this procedure will be in accordance with the wishes of your Government. Plenipotentiaries are fully acquainted

<sup>1</sup> Several important telegrams were omitted from the above speech, but they have been supplied in the following sub-section. Those appearing in both this and the following sub-section have been numbered in order of their appearance, so that, if necessary, they may be read consecutively.

with the Imperial aspect of the problem and with the keen interest taken by the Dominion Governments in its solution. Similar telegram sent to other prime ministers. Ends.

DEVONSHIRE.

Hon. members will observe that this communication begins with the words, 'Yesterday invitations were sent'—not, as has been interpreted in some of the press discussions which I have seen on the subject, 'are being sent'—which would indicate that the Governments mentioned were considering sending certain invitations and were desirous of consulting in the first instance with the Government of Canada in reference to them. Our information was of *un fait accompli*—the statement given to us was to the effect that the invitations had been sent the day before. I would ask hon. members to notice the wording of the first sentence—'were sent by the Governments of Great Britain, France and Italy'. The dispatch does not say that the invitations were sent on behalf of the Governments of the British Empire; the meaning is clear.

According to arrangements agreed upon with the French and Italian governments, each Government will be represented at Lausanne by two plenipotentiaries.

'Each Government' refers to the Governments mentioned in the opening sentence of the dispatch, namely, the Governments of Great Britain, France, and Italy. There is no mention there of the Governments of the British Empire; in particular, there is no mention there of the Dominion of Canada, nor indeed, will there be found anywhere within the four corners of this dispatch the least intimation that in any way it was intended that the Dominion Government should be represented at this Conference by the plenipotentiaries that are named therein.

There was, accompanying this dispatch, another communication, also of a confidential character, which had a distinct bearing upon the reply which was sent by this Government. Indeed, both communications should be read together in order to enable those who are interested properly to appreciate the full significance of the reply which the Canadian Government sent. Now, I am precluded from giving the text of the other communication to which I have referred, but when this matter first came up in the House I sent a copy of all the correspondence to my right hon. friend, the Leader of the Opposition, so that he would be aware, being a member also of the Privy Council, of the full nature and extent of the correspondence that had passed between the two Governments, and I wish to say in his hearing that that communication gave reasons why the Government of Canada was not being invited and why representatives from this Government should not and could not be present at the Lausanne



Conference.<sup>1</sup> That fact, I think, should be made clear in view of the discussion that has taken place in the Old World as well as in this with respect to the stand taken by the Government of Canada. I think it should have been made clear in the British House of Commons that there had been a communication which, in so many words, gave reasons why Canada could not be represented at the Conference.

Having received this intimation, we had to consider the nature of the reply which we would send. Had we wished to create an embarrassing situation, we might possibly have taken strong exception to the manner in which this whole subject had been brought to our attention and to the course adopted, but we realized that there were many serious aspects of European politics which it was advisable for us to take into account. We were in no way anxious to add to the difficulties of the British Government in dealing with these matters; indeed, we were desirous of doing all in our power to assist in removing any sort of embarrassment, and in that spirit and wholly from that motive the following message, of date October 31, was sent by His Excellency the Governor-General, as coming from myself, in reply to the Duke of Devonshire's message:

(No. 2.) I have the honour to acknowledge the receipt of Your Grace's dispatch of the 27th instant, informing our Government of the invitations to the Lausanne Conference which have been sent to the Governments of other countries by the Governments of Great Britain, France and Italy, and setting forth the procedure in reference thereto.

Our Government has no exception to take to the course pursued by His Majesty's Government with respect to the conclusion of a treaty to end the war in the Near East. As, however, it is proposed to keep our Government informed from time to time of the general lines of policy on which British plenipotentiaries propose to proceed, and of the course of negotiations, and to invite us to sign a new treaty and any separate instrument regulating the status of the Straits, we deem it advisable to avail ourselves of the earliest opportunity to inform His Majesty's Government that in our opinion the extent to which Canada may be held to be bound by the proceedings of the Conference or by the provisions of any treaty or other instrument arising out of the same, is necessarily a matter for the Parliament of Canada to decide and that the rights and powers of our Parliament in these particulars must not be held to be affected by implication or otherwise in virtue of the information with which our Government may be supplied.

This was signed by His Excellency, Lord Byng. I would direct the attention of the House to the use in this dispatch of the words 'a treaty to end the war':

Our Government has no exception to take to the course pursued by His Majesty's Government with respect to the conclusion of a treaty to end the war in the Near East.

<sup>1</sup> These reasons are supposed to have been that France objected to delegates from the Dominions unless her colonies of Tunis, Algeria, and West Africa were also given representation. *The Round Table*, Sept. 1924, p. 810.

The intimation that had been given to us concerning the Lausanne Conference was that it was a conference for the purpose of bringing the war to an end. When this first communication was being considered by council the question naturally arose, how did Canada come to be in the war?—was it at the instance of some action of our Governor in Council, or was war declared by His Majesty the King on the advice of his Ministers in Britain? I think the facts will disclose that His Majesty the King acted on the advice of his Ministers in Britain in declaring war against Turkey. That being the case, it did not seem to us an unnatural thing that His Majesty's Ministers in Great Britain should deem that they were in a position to conclude a treaty which would end the war without feeling the necessity of insisting upon other parts of the British Empire also sending representatives to Lausanne. We therefore made it clear that we did not propose to take exception to the course which had been pursued, of arranging a conference to end the war. But, as the intimation went further than merely dealing with the question of ending the war, and indicated that there might be new obligations arising out of some new treaty, we felt it our duty at once to avail ourselves, as the dispatch says, of the earliest opportunity to tell His Majesty's Government that, with respect to new obligations that might be created, obligations of a nature other than those which merely related to the question of the ending of the war, our Parliament would wish to exercise its right to say to what extent it would be bound by those obligations—there being no representative of Canada at the Conference and there being no opportunity for real conference or consultation in connexion with its proceedings.

I think a great deal of the misunderstanding and misapprehension which has arisen in this matter has grown out of the circumstance that when the public were first informed in the British Parliament of the attitude of the Canadian Government they were informed in words that did not accurately represent the facts. Indeed, the Prime Minister of England, Mr. MacDonald, has given me authority to state to the House that if his words in any way conveyed the impression that Canada had been formally asked to be represented at the Conference and that we had concurred in such a course, they were conveying a meaning which was not in accordance with the facts.

Let me read from a journal of high reputation which contains an article that has been much quoted and which I think will help to explain wherein the different parts of the British Empire have received an entirely erroneous impression of the Canadian Government's action. I refer to the article which appeared in the London *Times* on Wednesday April 9, 1924, headed 'Lausanne and Canada'. I shall not read the whole editorial, but in order that hon. members may have the context of the facts I desire to quote I will read the first part of it:

The House of Commons will have a further opportunity this afternoon to discuss the attitude of the Canadian Government towards the Treaty of Lausanne, but the light which is needed can come only from the Canadian Government itself, which undoubtedly has acted wisely in welcoming the publication of the correspondence which has passed on the subject between Great Britain and the Dominion. The question asked by the Montreal Star, 'Is Canada at War with Turkey?' may seem absurd. Yet it is a legitimate constitutional comment on Mr. Mackenzie King's refusal to recommend ratification to his Parliament and really goes to the root of the Imperial problem. Nothing is easier than to pick holes in the Turkish Treaty, and particularly in the Straits Convention, which forms part of it; but Mr. King's objection, on his own showing, is not so much to the treaty itself as to the manner in which it was negotiated. The history of the Lausanne Conference scarcely sustains that objection—

Now this is the part to which I wish to direct special attention:

—for Mr. King himself appears to have been a party to the arrangements made for the representation of the British Empire in general and for Canada in particular. According to Mr. Ramsay MacDonald, all the Dominions, including Canada, were asked if they consented to Lord Curzon and Sir Horace Rumbold attending the conference as 'Imperial representatives'. To this they agreed—indeed, we have it on the authority of Mr. King himself that Canada 'did not desire separate representation'. In other words, to quote Mr. Ramsay MacDonald, 'Canada was represented by Lord Curzon at Lausanne with her full knowledge and consent'.

Those statements are entirely erroneous. Canada was not represented at Lausanne. I was not, as this editorial says, any party to representation. No word was sent to us in any dispatch asking us if we would accept Lord Curzon or Sir Horace Rumbold as 'Imperial representatives'. Language of that kind was not used in any of the dispatches. We were told that Lord Curzon would represent the Government of Great Britain and we were given reasons why Canada could not be represented. These were the facts as they were before us at the time we were considering what reply we should send to the dispatch that had been received. *The Times* editorial goes on:

In due course the treaty was signed and if Mr. King had a word of protest or of criticism the people of this country and of his own have still to learn the fact.

The correspondence which has been brought down will show, I think, that so far as the British Government was concerned there could be no mistaking our attitude. Such criticism as we had to make was set out in the clearest language in the communications that passed. I think I may leave it to the hon. members to judge for themselves whether there could have been in the minds of the British Government, or to any of those to whom these dispatches may have been referred, the slightest doubt as to our position. *The Times* article goes on:

Then came the Imperial Conference. On October 5 Lord Curzon delivered a very full explanation of the treaty and its terms to the Prime Ministers, with the happy result that, in the official words of the summary of the proceedings, 'the Conference recorded its satisfaction at the conclusion of peace between the Allies and Turkey'. If Mr. King dissented, the report is silent on the subject.

One would gather from this that at the Imperial Conference I had not dissented from the view that Canada was represented. . . . I purpose . . . to tell this House and the country, and to tell the people of Great Britain—and I think it should have been told before this by a British Minister—that at the Imperial Conference I distinctly stated that Canada was not invited, I distinctly stated that Canada had not been represented at Lausanne, and I distinctly gave the reason why we did not take exception to not being represented, intimating that we had felt that probably these matters, in the opinion of those who had sent out the invitations, had not the same immediate and direct interest for Canada as matters such, for example, as those which were discussed at Versailles were supposed to have. . . .

In referring to international conferences, I stated that when we came into office the conference on the limitation of armaments was being held at Washington, that Sir Robert Borden was representing Canada, that Sir Robert's report had been made to the Government, and that I would like to draw the attention of the members of our Conference to two or three of its pages, more particularly where Sir Robert Borden sets forth his views on the matter of treaties, as they represented a point of view which I thought we in Canada all held in common: That at Genoa and at The Hague we were represented—that we had been invited to be present at those conferences and, considering their nature, we felt it would perhaps be not only of interest and benefit to ourselves, but also to others if we were represented there; that at Lausanne we were not represented, that we were not invited; that we had taken and took no exception to not being invited; that we felt that the matters that were being discussed there were not of the same immediate and direct interest to ourselves as they were to those who were represented at the Conference, and that therefore we had no exception to take to the course that was adopted.

That was the substance of my words at the Imperial Conference, representing Canada's voice in this matter. . . .

Lord Curzon (as stated in *The Times*) did deliver a statement as to what had taken place at the Conference. It was the first intimation, apart from the communications that had been received during the course of the Conference itself, that the Dominions Prime Ministers had had of what had taken place, and when we were informed that a treaty of peace ending the war with Turkey had been concluded, when we were told this by Lord Curzon, naturally we expressed satisfaction at such an announcement, and we were only too pleased to

have it recorded in the proceedings of the Conference. But the point that attention is here being directed to is that the attitude that Canada is now taking is something different from that which was taken at the Conference, whereas the contrary is entirely the truth of the situation. *The Times* article goes on:

The Canadian Parliament has now been asked to ratify the treaty and Mr. King has suddenly discovered that the Dominion was not even a party to the contract.

As though there had been a complete change! I have suddenly discovered we were never a party to the contract!—when from the very first dispatch up to the last, we were making our position absolutely and wholly clear on that point. The editorial goes on:

According to his argument, Canada was 'not invited' to Lausanne, and therefore cannot be bound by the treaty. That statement, which in itself implies a grievance, can hardly be reconciled with his admission that the Dominion 'did not desire direct representation', and with his acceptance of Lord Curzon and Sir Horace Rumbold as 'Imperial representatives'.

Now if it were true that I or the Government had taken any such position or had accepted Lord Curzon as an 'Imperial representative', certainly we would be entitled to this kind of criticism and attack. But we have never at any time understood that Lord Curzon in any sense of the word was representing this Dominion: and, as I have already said, we had very special grounds for knowing that, so far as the Dominions were concerned, they were not being represented at Lausanne. Further than that, not only did I take that position in discussing foreign affairs at the main sittings of the Imperial Conference, but at least at two subsidiary conferences I again spoke with reference to Canada's attitude on the Lausanne Treaty, and the minutes of the proceedings of one of the conferences contains a direct statement which will be found in the Foreign Office at the present time to the effect that the Prime Minister of Canada intimated that it might not be possible for the Canadian Government to express formal concurrence in the ratification. . . .

. . . In the presence of the Prime Ministers of the other Dominions and the members of the British Government, I made it clear that because we were not represented, and because we had no part in the Conference, this Government did not feel that it could bring into the House a treaty negotiated as this treaty had been negotiated, and expect to have the approval of Parliament of the obligations it carried with it. I made that clear, but I also made clear that we did not intend to embarrass the British Government in the matter when it came to the final ratification of the treaty, and that whatever position the British Government might wish to take with regard to it, we would raise no objection. In other words if the British Government recommended the ratification of the treaty, so far as Canada was con-

cerned, we were quite prepared that ratification should bind us. We never raised the question as to Canada not being bound by ratification. If hon. members will look through the correspondence, they will see that our attention was specifically drawn to the fact that the treaty when ratified would bind us. Let me refer to the dispatch which appears under date December 8, 1922,<sup>1</sup> and which reads:

Any treaty resulting from the Lausanne Conference will of course replace the treaty of Sèvres, and until it comes into force, a state of war between the British Empire and Turkey will technically continue. Treaty must, therefore, be binding on the whole Empire when ratified.

There was a specific statement made to us. We have taken no exception at any time to that statement. We have never stated that the Lausanne Treaty would not bind the whole Empire. Our attitude is being construed at the moment as if in some way we were acting in a manner which would dismember the Empire; as if we were seeking to break away, and to have Canada separate herself into some little community by herself. We have never taken that attitude. We have never questioned the fact that when the treaty was signed it would bind us. . . .

As to the extent of obligation arising between different parts of the Empire, in other words, considered intra-imperially, in the carrying out of its provisions, the Government takes the position that it will be for this Parliament to decide what, should occasion arise, in the light of all the circumstances, and in the light of the manner in which this treaty was negotiated, and the discussion we are having at the present time, its obligation may be under the terms of the treaty.

MR. MEIGHEN: Would not that be exactly the effect if we expressly ratified the treaty?

MR. MACKENZIE KING: No, I think there is a great difference, with all due respect to my right hon. friend. It is one thing for the Government to be represented as we were at Versailles, by Ministers who were given full powers in virtue of an order in council passed by the Government of Canada, requesting that such full powers should be given by His Majesty's Ministers who were present at Versailles through all stages of the negotiations, who understood the Canadian position, and the Canadian attitude, and saw that it was maintained, and then signed with full powers given by the King with authority to sign, in respect of the Dominion of Canada. It is quite a different matter where a treaty is negotiated, drafted and concluded as this was by a conference which had been arranged before any member of the Government knew it was being called, and at which no representative of Canada was present to take any part in the proceedings.

. . . I referred a moment ago to a report of Sir Robert Borden, a report which I brought to the attention of all who were present at the

<sup>1</sup> For the entire dispatch cf. *infra*, Sub-section (2), No. 5, p. 271.

Imperial Conference. It is the report which was made of the Conference on the Limitation of Armaments held at Washington from November 1921 to February 6, 1922, a report of the Canadian delegate including treaties and resolutions. On page 42 of this report under the sub-heading Dominion Representation in the British Empire Delegation, Sir Robert Borden sets out very clearly and concisely the stages which he believes should be followed in negotiation of treaties of an inter-Imperial character by which the Dominion of Canada is to be bound. Broadly, Sir Robert presents the matter as follows: That, as respects negotiation, the Government of Canada should be consulted before preliminary arrangements are finally concluded; that Canada should be represented by one who is duly authorized by her own Government, by one who holds full powers from His Majesty the King at the request of the Government of Canada; that the treaty to be binding should be signed in respect of Canada by such representative, and that as regards ratification it should be left to the Government to decide whether they wish to make it an executive act without reference to Parliament or to follow the procedure which was followed in the case of the Versailles Treaty of referring the treaty to Parliament in the first instance for approval before ratification.

Our dispatch to the British Government on December 31, 1922, with reference to the signing of this treaty is based on the position as stated by Sir Robert Borden in his report to this Parliament, which report was accepted by this Parliament. . . .

Ottawa, December 31, 1922.

(No. 6.) Following from Prime Minister for you. Begins:

Treaty with Turkey. Your Grace's telegram of December 8 begins: Quote. Our message of November 16 was framed on the assumption that the Canadian Government would wish to follow the procedure adopted in the case of treaties with Germany, Austria and Bulgaria. End quote.

The procedure referred to is, we understand, that adopted with respect to the Paris Peace Conference, and followed later with respect to the Washington Conference on the Limitation of Armament. As regards Canada's participation there were in that procedure four separate, distinct and essential stages.

One. Direct representation of Canada at the conferences at which the treaties were drafted, and participation in the proceedings of the conferences by Canada's representatives, each representative holding a Full Power signed by His Majesty the King in the form of letters patent authorizing him to sign (quote) for and in the name of His Majesty the King in respect of the Dominion of Canada (end quote) any treaties, conventions or agreements that might tend to the attainment of the object of the conferences, the Canadian Government having by Order in Council sanctioned the issuance of these Full Powers by His Majesty.

Two. Formal signing of the treaties on behalf of Canada by the plenipotentiaries so named.

Three. Approval by the Parliament of Canada of the treaties thus signed on behalf of Canada.

Four. Assent of the Government of Canada to the final act of ratification by His Majesty the King of the treaty signed on behalf of Canada and approved by the Parliament of Canada.

Your Grace is quite right in assuming that as regards treaties in which Canada is supposed to have a direct or immediate interest, the procedure here outlined is the one which our Government would wish to follow. In the case of the main political treaties concluded since the War, in general the rule seems to have been followed that, wherever the Dominions could be said to have a direct or immediate interest, the procedure was shaped to include their participation in, and signature of, the proceedings. That in the case of the conference at Lausanne a like procedure has not been followed with respect to representation and participation by Canada, has been regarded by us as evidence that in the opinion of the countries by whom the invitations to the conference at Lausanne were extended, Canada could not have been believed to have the direct and immediate interest which she was supposed to have in the conferences at Versailles and Washington.

To the course pursued with respect to the Lausanne Conference, we have, as mentioned in my telegram of October 31, no exception to take. As regards procedure, however, it must be apparent that quite apart from any action or representation on the part of the Government of Canada, a different procedure has been followed in the case of the present conference at Lausanne to that followed at Versailles and Washington. In so far as one stage in procedure is necessarily dependent upon the stage preceding it is difficult to see how a like procedure can be followed. Canada has not been invited to send representatives to the Lausanne Conference, and has not participated in the proceedings of the conference either directly or indirectly. Under the circumstances, we do not see how, as respects signing on behalf of Canada, we can be expected in the case of a new treaty or of any separate instrument regarding the Straits, to follow the procedure adopted in the case of the treaties with Germany, Austria and Bulgaria. Ends.

I should like hon. members to notice that this dispatch is dated December 31, 1922. The treaty was signed on July 24, 1923. Fully six months before the treaty was signed, we made it clear to the British Government that in view of the fact that we had not been invited to send representatives to the Lausanne Conference, had not participated in the proceedings of the Conference, either directly or indirectly, we did not, under the circumstances, propose to sign the treaty. That was before the Imperial Conference was held. I think I am entitled to say that if the British Government held a different view of our obligations or were inclined to question our attitude, they should have raised that question at the Imperial Conference. . . . In passing I should direct the attention of the House to a dispatch of January 27, 1923, from the Secretary of State for the Colonies:

(No. 7.) Your telegram dated December 31, Lausanne Conference. Please inform your Prime Minister that in the circumstances His Majesty's



Government willing to fall in with his suggestion that any treaties with Turkey resulting from conference should be signed only by the British plenipotentiaries who have negotiated them, if it is generally acceptable. I am ascertaining whether it will be agreeable to the Prime Minister of the Commonwealth of Australia and the Prime Minister of New Zealand.

Hon. members have just heard my dispatch: I leave it to the House as to whether it contained any suggestion that the signature should be in any sense a signature other than that of the British plenipotentiary acting in accordance with the authority which he had at the time the invitations were sent out.

I hope I have made it clear that the Government in its attitude on this matter has been trying to maintain logically and consistently the position which was fought for, gained, and held by Canada's representatives at the Versailles Conference, which was followed in subsequent treaties, which was followed in the international conference that was held at Washington on the question of armaments, and which was followed in the conferences at Genoa and at The Hague. If we had departed from that procedure we should in our opinion have been justly entitled to such measure of criticism and censure as this House might have seen fit to pass upon us. We were simply seeking to maintain that equality of status which had been gained, and which we have been in the habit of asserting, as between the self-governing Dominions and the Mother Country, in matters of a kind that are supposed to affect us all. . . .

Not only is the position which this Government has taken with respect to this treaty in accordance with precedent which we believe to have become well established, but it is also entirely in accord with the agreement which was reached at the Imperial Conference with respect to negotiation, signature, and ratification of treaties. . . .

I do not wish to detain the House for any length of time on this matter but I believe that it is well that hon. members should appreciate the serious phases of it. Either the treaty we are discussing by which this Parliament is to be bound is purely nominal and technical, or it stands for something substantial and carries certain obligations with it. If it carries obligations which involve both the honour and the resources of the country then this treaty should receive from Parliament the most careful attention in all its aspects before any action should be taken in the nature of approval of its provisions prior to ratification.

What I want to make clear . . . is this: There is a distinction to be drawn between the purely legal and technical position in which this Dominion may be placed and the moral obligations which arise under treaties depending upon the manner in which such treaties are entered into, upon the parties who are present, and the representative capacities in which they acted while negotiations were proceeding. Legally

and technically Canada will be bound by the ratification of this treaty; in other words, speaking internationally the whole British Empire in relation to the rest of the world will stand as one when this treaty is ratified. But as respects the obligations arising out of the treaty itself, speaking now of inter-Imperial obligations this Parliament, if regard is to be had to the representations which from the outset we have made to the British Government, will in no way be bound by any obligation beyond that which Parliament of its own volition recognizes as arising out of the situation.

N.B. Space does not permit a reproduction of Mr. Meighen's very able speech in reply to Mr. Mackenzie King; but the following brief paragraph gives a fair summary of his general position on the Lausanne issue. The full speech is found in the *Canadian House of Commons Debates*, June 9, 1924, pp. 2937-52.

I think (the Prime Minister) expressed what is a common attitude of mind of the entire Canadian people . . . namely that we should pursue our destiny within the circumference of the Empire, as a self-governing Dominion, and that in doing so we should seek honourably to discharge our part by an honourable co-operation with the other Dominions and the motherland. . . . There are two pillars upon which the future can be erected. We must first of all insist, as we have always done, the insistence year by year becoming less necessary, on the full exercise of our full governing powers, on the most complete autonomy for this Dominion as respects matters which concern ourselves. . . . There is another cornerstone, though, upon which this future must be built. This is the one referred to by the Prime Minister himself. There must necessarily be co-operation, and a cordial co-operation, for the common purposes of Empire between all the parts thereof. We cannot build a future on the basis of autonomy alone. . . .

Assuming that these two are basic requirements, let me ask first of all: Have they been lived up to? Have we been true to them in relation to the Lausanne negotiations? . . . One necessarily is not in immediate and direct possession of all those facts and surrounding circumstances that give certainty to judgement; but subject to that consideration, I say that the policy involved in the treaty itself and especially in the Straits Convention is, I think, a mistake, and a policy from which it was the duty of this Government to endeavour to avert the British plenipotentiaries. It was the duty of this Government to see to it that they adopted such means of communication and inter-negotiation as were clearly open to them to present the viewpoint of Canada. . . . What we should have done is this—we ought to have sought, as we did at the Conference of 1921, to avert the British Government from a line which affected interests peculiar to Canada and direct it along a line which more suited Great Britain as a world Empire. . . . I believe that in order that Great Britain's position as a world power may be appreciated, and that she may most wisely determine her general lines of policy, the Dominions of the Empire owe it to her to present their viewpoints on all subjects that concern the issues of peace and war.

## 2. TELEGRAMS OMITTED FROM ABOVE EXTRACT

(*Canadian Sessional Papers*, 1924, No. 232, pp. 6-11)

(No. 3) *From the Secretary of State for the Colonies to the Governor-General*

London, November 16, 1922.

Following from Prime Minister for your Prime Minister. Begins:  
I brought your message of October 31 as to the Lausanne Conference before the Cabinet to-day. We fully understand that it is the desire of the Canadian Government that any Treaty with Turkey, which may result from the Conference, should be submitted to the Canadian Parliament for approval before His Majesty is advised to ratify it. It is our most earnest desire that you should be kept fully informed of the developments of the Conference and we shall endeavour to send you full details. Ends.

DEVONSHIRE.

(No. 4) *From the Governor-General to the Secretary of State for the Colonies*

Ottawa, November 25, 1922.

Following from Prime Minister for you. Begins:

Your Grace's message of November sixteenth, referring to mine of October thirty-first, concerning the Lausanne Conference, was carefully considered by our Cabinet to-day. We feel that the purport of my message of October thirty-first has not been correctly interpreted or understood. (Stop) Our Government has not expressed a desire to have any treaty with Turkey, which may result from the Conference, submitted to the Canadian Parliament for approval, before His Majesty is advised to ratify it, nor do we wish to be understood as preferring any such request. My message was intended to make clear that we had no exception to take to Canada not being invited to be represented at the Conference, but, inasmuch as we had been informed that we would be invited to sign a new Treaty and any separate instrument regulating the status of the Straits we wished to make it perfectly clear that in our opinion the extent to which Canada may be held to be bound by the proceedings of the Conference or by the provisions of any treaty or other instrument arising out of the same, was necessarily a matter for the Parliament of Canada to decide. (Stop) We deem it of the utmost importance that there should be no misunderstanding as to our position with respect to Canada's obligations in this and kindred matters. (Stop) In our opinion Parliament will desire, as respects the Treaty with Turkey and any other instruments arising out of the Lausanne Conference to reserve to itself the right to decide upon the merits of the case what action on the part of the people of Canada is right and proper.

In this connexion we shall be pleased to have authority to place before Parliament all the information with which we may from time to time be supplied. Ends.

BYNG.

(No. 5) *From the Secretary of State for the Colonies to the Governor-General*

London, December 8, 1922.

Your telegram of November 25. Following for your Prime Minister. Begins:

Treaty with Turkey. Our message of November 16th was framed on the assumption that the Canadian Government would wish to follow the procedure adopted in the case of treaties with Germany, Austria, and Bulgaria. I am sorry if your telegram of October 31 was *not fully understood here*, as you say it is most important that there should be no misunderstanding on so important a question. Awkwardness therefore sets out the position as it appears to us. It is this. Any Treaty resulting from the Lausanne Conference will of course replace the Treaty of Sèvres and until it comes into force, a state of war between the British Empire and Turkey will technically continue. Treaty must therefore be binding on the whole Empire when ratified. It remains to be seen whether there will be a successful issue to the Lausanne Conference, but if there is, we should much prefer that any new Treaty should follow (?) Paris precedent, and include signatures on behalf of all the Dominions. Do I gather from your telegram that the Canadian Government are not adverse to the procedure proposed as regards the signature of the new Treaty and of any separate instrument regarding the Straits but wish to make it clear that should anything in the Treaty or instrument be held to impose any serious international obligation on Canada, as part of the British Empire, it cannot be considered binding on Canada until approved by Parliament? If so, it does not appear to us that the procedure which you propose is essentially different from that which we should adopt in relation to Parliament here if the contingency contemplated should arise. In any event should legislation be required to give effect to the technical provisions of the Treaty, this would presumably necessitate its submission to the Parliament in Canada as here.

As regards last sentence of your telegram, would it not be well to wait until it is known whether the Lausanne Conference results in the signature of a Treaty or Treaties and then lay the instruments themselves before Parliament. I do not think that it would be possible to publish any of the telegrams now being sent to you concerning the proceedings at Lausanne seeing that they often contain records of confidential interviews and impressions and other material intended only for private information. Ends.

DEVONSHIRE.

(No. 8) *From the Secretary of State for the Colonies to the Governor-General*

London, February 22, 1924.

My telegram Peace Treaty with Turkey. In order that the necessary action may be taken as soon as possible after the Bill becomes law, hoped that your Ministers will be in position, at very early date, to signify concurrence in ratification of Treaty and Conventions in question, including the Convention relating to Reparations, and also to intimate their wishes as regards declaration in connexion with the Convention respecting the conditions of the Business and Commercial Convention, see my predecessor's dispatch dated August 20, Dominion Treaty No. 31, paragraph 3.

SECRETARY OF STATE FOR THE COLONIES.

(No. 9) *From the Governor-General to the Secretary of State for the Colonies*

Ottawa, March 24, 1924.

Your telegrams March 21 and February 22:

The Government of Canada not having been invited to send a representative to the Lausanne Conference and not having participated in the proceedings of the Conference either directly or indirectly, and not being for this reason a signatory to the Treaty on behalf of Canada (see my telegram to your predecessor December 31, 1922) my Ministers do not feel that they are in a position to recommend to Parliament the approval of the Peace Treaty with Turkey and the Conventions thereto. Without the approval of Parliament they feel they are not warranted in signifying concurrence in ratification of the Treaty and Conventions. With respect to ratification, however, they will not take exception to such course as His Majesty's Government may deem it advisable to recommend. This appears to be in harmony with the resolution of the recent Imperial Conference (Cmd. 1987, pages 14 and 15). The provisions thereof with reference to signature 2 (a) on page 14 and ratification (a) on page 15 appear to cover this case, which is not within the provisions of signature 2 (b) on page 14 and ratification (b) on page 15.

GOVERNOR-GENERAL.

E. THE IMPERIAL CONFERENCE, 1923

1. REPORT OF THE IMPERIAL CONFERENCE, 1923<sup>1</sup>

(*Parliamentary Papers (Great Britain)*, 1923, Cmd. 1987, pp. 10-17)  
*Foreign Relations*

The discussions on foreign relations were commenced on October 5 by the Secretary of State for Foreign Affairs, who gave to the Con-

<sup>1</sup> The Imperial Economic Conference made a separate report, which is found in *Canadian Sessional Papers*, 1924, No. 36.

ference a review of the general situation in every part of the world, and the most frank exposition, first, of the main problems which have confronted the Empire during the last two years, and, secondly, of those which seem most likely to arise in the near future.

The greater part of what Lord Curzon said was necessarily of a confidential character, since it was his object to supplement the written and telegraphic communications of the past two years by giving orally to the representatives of the Dominions and India the inner history of the period, but it was thought advisable that extracts from those parts of his speech which related to subjects of immediate interest and importance, viz., the situation in connexion with the Reparations problem and the Turkish Treaty, should be published forthwith.

This was a departure from the practice at previous Imperial Conferences, when statements made by the Foreign Secretary have been regarded as confidential throughout.

Lord Curzon's review was followed by a general discussion on foreign relations, in which Lord Robert Cecil as British representative on the Council of the League of Nations, all the Dominion Prime Ministers present, the Vice-President of the Executive Council of the Irish Free State, and the three members of the Indian delegation took part.

Frequent and detailed examination was given, not only to the main features of the international situation, but to the different aspects of that situation as they developed from day to day. Nor did the Imperial Conference terminate its sittings until each subject had been carefully explored and a common understanding reached upon the main heads of foreign policy.

It was while the Conference was sitting that the President of the United States renewed the offer of the United States Government to take part in an international conference or inquiry to investigate the European Reparation problem, and to report upon the capacity of Germany to make the payments to which she is pledged. The Conference cordially welcomed, and decided to take immediate advantage of, this overture; and communications were at once entered into with the Allied Powers to obtain their co-operation.

The Conference, after careful consideration of the policy which has been pursued, was of the opinion that the European situation could only be lifted on to the plane of a possible settlement by the co-operation of the United States of America, and that, if the scheme of common inquiry to be followed by common action were to break down, the results would be inimical both to the peace and to the economic recovery of the world.

It felt that in such an event it would be desirable for the British Government to consider very carefully the alternative of summoning a conference itself in order to examine the financial and the economic problem in its widest aspect.

The Conference regarded any policy which would result in breaking up the unity of the German State as inconsistent with the Treaty obligations entered into both by Germany and the Powers, and as incompatible with the future discharge by Germany of her necessary obligations. The strongest representations on this subject were accordingly made to the Allied Governments.

The Conference considered the situation in the Near and Middle East and recorded its satisfaction at the conclusion of peace between the Allies and Turkey. An end had thus been brought to a period of acute political tension, of military anxiety and financial strain in the eastern parts of Europe; and more particularly had great relief been given to the sentiments of the Moslem subjects of the British throne in all parts of the world.

Another of the subjects that engaged the attention of the Conference was that of Egypt. The Conference was glad to recognize the great advance that has been made during the last two years towards a pacific settlement of this complex problem, which will safeguard important communications between several parts of the Empire.

The Conference, so much of whose time had been occupied two years ago with the question of the renewal or termination of the Anglo-Japanese Alliance and with the future regulation of the Pacific, noted with satisfaction the results of the Washington Conference, which had added immensely to the security of the world without disturbing the intimate relations that have for so long existed between the Empire and its former Ally.

It recognized with satisfaction the progressive fulfilment of the obligations incurred under the Washington Treaties; it registered the confident belief that the future relations between the Governments and peoples of the British Empire and Japan will not be less sincere and cordial than when the British and Japanese Governments were bound by written conventions; and it recorded its profound sympathy with the Japanese Government and people in the terrible catastrophe which has recently befallen them.

During the session of the Conference, the question of the regulation of the liquor traffic off the American coasts and of the measures to be taken to avoid a serious conflict either of public opinion or of official action was seriously debated. The Conference arrived at the conclusion that, while affirming and safeguarding as a cardinal feature of British policy the principle of the three-mile limit, it was yet both desirable and practicable to meet the American request for an extension of the right of search beyond this limit for the above purpose, and negotiations were at once opened with the United States Government for the conclusion of an experimental agreement with this object in view.

Finally, the Conference, after listening to a detailed exposition of the work of the League of Nations during the past two years, and

more particularly of the recent sitting of the Council and the Assembly at Geneva, placed on record its emphatic approval of the action that had been taken by, and the support that had been given to, the representatives of the British Empire on the latter occasion. There was full accord that the League should be given the unabated support of all the British members of the League as a valuable instrument of international peace and as the sole available organ for the harmonious regulation of many international affairs.

This Conference is a conference of representatives of the several Governments of the Empire; its views and conclusions on foreign policy, as recorded above, are necessarily subject to the action of the Governments and Parliaments of the various portions of the Empire, and it trusts that the results of its deliberations will meet with their approval.

### *Negotiation, Signature, and Ratification of Treaties*

The Conference recommends for the acceptance of the Governments of the Empire represented that the following procedure should be observed in the negotiation, signature, and ratification of international agreements. . . . (Here follow the provisions quoted below in sub-Section 4, pp. 286-8.)

### *Defence*

The Conference gave special consideration to the question of Defence, and the manner in which co-operation and mutual assistance could best be effected after taking into account the political and geographical conditions of the various parts of the Empire.

The Lord President of the Council, as Chairman of the Committee of Imperial Defence, opened this part of the work of the Conference by a statement outlining the main problems of Defence as they exist to-day. He was followed by the First Lord of the Admiralty, the Secretary of State for War, and the Secretary of State for Air each of whom explained to the Conference the aspects of defence which concerned his special responsibilities.

In addition to these statements there was a full and frank interchange of views in which the standpoints of the various representatives and the circumstances of their countries were made clear. There were also discussions at the Admiralty and Air Ministry at which Naval and Air Defence were dealt with in greater detail. The points involved were explained by the Chiefs of the Naval and Air Staffs respectively, and were further examined.

After the whole field of Defence had been surveyed, the Conference decided that it would be advisable to record in the following



resolutions its conclusions on the chief matters which had been discussed:

1. The Conference affirms that it is necessary to provide for the adequate defence of the territories and trade of the several countries composing the British Empire.

2. In this connexion the Conference expressly recognizes that it is for the Parliaments of the several parts of the Empire, upon the recommendations of their respective Governments, to decide the nature and extent of any action which should be taken by them.

3. Subject to this provision the Conference suggests the following as guiding principles:

(a) The primary responsibility of each portion of the Empire represented at the Conference for its own local defence.

(b) Adequate provision for safeguarding the maritime communications of the several parts of the Empire and the routes and waterways along and through which their armed forces and trade pass.

(c) The provision of naval bases and facilities for repair and fuel so as to ensure the mobility of the fleets.

(d) The desirability of the maintenance of a minimum standard of naval strength, namely, equality with the naval strength of any foreign power in accordance with the provisions of the *Washington Treaty on Limitation of Armament* as approved by Great Britain, all the self-governing Dominions and India.

(e) The desirability of the development of the Air Forces in the several countries of the Empire upon such lines as will make it possible, by means of the adoption, as far as practicable, of a common system of organization and training and the use of uniform manuals, patterns of arms, equipment and stores (with the exception of the type of aircraft), for each part of the Empire as it may determine to co-operate with other parts with the least possible delay and the greatest efficiency.

4. In the application of these principles to the several parts of the Empire concerned the Conference takes note of:

(a) The deep interest of the Commonwealth of Australia, the Dominion of New Zealand, and India, in the provision of a naval base at Singapore, as essential for ensuring the mobility necessary to provide for the security of the territories and trade of the Empire in Eastern waters.

(b) The necessity for the maintenance of safe passage along the great route to the East through the Mediterranean and the Red Sea.

(c) The necessity for the maintenance by Great Britain of a Home Defence Air Force of sufficient strength to give adequate protection against air attack by the strongest air force within striking distance of her shores.

5. The Conference, while deeply concerned for the paramount importance of providing for the safety and integrity of all parts of the Empire, earnestly desires, so far as is consistent with this consideration, the further limitation of armaments, and trusts that no opportunity may be lost to promote this object.

*Status of High Commissioners*

Certain questions were discussed relating to the status of the High Commissioners in Great Britain, particularly in connexion with precedence and with exemption from taxation, Customs duties, &c.

The representatives of the British Government undertook to examine the points raised, while explaining that any alteration of the existing rules of precedence would require the approval of His Majesty the King.

. . . . .

## 2. 'DID THE IMPERIAL CONFERENCE FAIL?'

(John W. Dafoe in *MacLean's Magazine*, January 15, 1924)

Perhaps as significant as anything that took place at the Imperial Conference which was held in London in October and November was the absence, in the formal resolutions and declarations made public upon the conclusion of the gathering, of any statement about the functions of the conference system or any forecast as to its future.

This was in marked contrast to the procedure in 1921, when a resolution was adopted suggesting annual meetings if this were found possible. It was believed by participants in the 1921 Conference—at least by some of them—that they had discovered in the Conference an instrument for Empire government. Mr. Hughes of Australia, in a statement to the Parliament of the Commonwealth, set out his understanding of what had been accomplished in the way of supplying the Empire with a government. There was, he explained, in continuous existence an Imperial Cabinet of which the Prime Minister of Australia was always a member though, owing to absence, he might not be able to attend. 'The only instrument of government (for the Empire) is the Imperial Cabinet. . . . The representatives of the Dominions and of Great Britain are to meet annually, and the Dominions are to be kept regularly informed of what is passing in foreign affairs.'

That is to say the Imperial Cabinet was to act for the whole Empire between these annual conferences, subject to the right of the Dominions to be consulted. Then once a year the Imperial Cabinet was to be enlarged by the attendance of Prime Ministers from overseas who were always members of it even though absent; and at this gathering developments of the preceding year would be reviewed and new policies for the coming year laid down.

This exposition by Mr. Hughes is probably an authentic statement of what the directing minds of the 1921 Conference aimed at accomplishing and thought they had accomplished. The agenda of the Conference for 1923 in itself supports Mr. Hughes' theory. It submitted as the first subjects for consideration: '1. Statement as to

the general position on main issues of Imperial policy. 2. Review of foreign affairs since the last Conference and consideration of present problems and future policy.'

One sees in various Canadian newspapers claims that nothing happened at the last Conference which marked it as different in any respect from its immediate predecessor—that it merely carried on, so to speak. It is true that the published records show no definite reversal of the policies of the 1921 Conference, just as the records of that Conference are silent about the profoundly important innovations in policy which it sought to institute. It is the method of the Conference, borrowed from *British constitutional procedure*, not to record changes but to let them reveal themselves by their manifestations. One can as frequently find clues in what is left out of the record as in what is stated; and a study of the carefully edited report of the Conference, noting both its admissions and its reticences, in the light of information which was available to one who watched it at fairly close range gives an idea of the actual results which time, it may be predicted, will confirm.

In the light of that reading and his accompanying knowledge the writer has no hesitation in saying that the conception of the Conference as a body governing the Empire—the idea plainly indicated by Mr. Hughes in his statement to the Australian Parliament—has been either destroyed by the proceedings of the late Conference or put in abeyance until conditions are favourable for its revival. There is nothing in the report to suggest that either annual or biennial meetings of the Conference ought to be held. There is in the final paragraph of the report, a statement that 'the members of the Conference are unanimous that the hours spent in consultation have been of the greatest value and will do much to facilitate the work of achieving unity of thought and action on matters of common concern to all parts of the Empire'. This is a recognition of the worth of the gathering at a Conference; and as a Conference meeting at infrequent intervals, every four or five years perhaps, it will continue to play its part in working out the problems of relationship and co-operation between the various nations belonging to the *British Commonwealth*. But the bright dream of turning the Conference into a super-government of the Empire, meeting annually, and in the recess making the Imperial Cabinet (an imaginary body comprising the British cabinet plus the Dominion Prime Ministers in absentia) its executive agent has faded.

To prevent misunderstanding, it might be said that it was never hoped, by any one, that the decisions and policies of the Imperial Conference or the shadowy Imperial Cabinet which took over its powers between times, would become automatically effective throughout the Empire. The governments represented in the Conference and jointly responsible for these policies were expected to see that

they were carried out in their own countries by political action. This was the rock upon which the scheme foundered. It is one thing for a Dominion Premier to consent in Downing Street, under the intangible but very real pressure there exerted, to a policy, and quite another to get him up to the point of making it effective at home by the tedious and sometimes dangerous process of first convincing his colleagues, then his party caucus, then Parliament. Besides it has happened more than once both in Canada and in other Dominions that Prime Ministers have come home only to pass into opposition before the next meeting of Parliament; in such cases the former opposition leader upon becoming Premier is not disposed to accept any legacies in the form of Imperial commitments.

If the inner history of the late Conference is ever told in full, it will doubtless be found that a good many plans or suggestions which under encouragement would have become plans, did not get very far because there were always caveats being entered now by this Prime Minister, now by that. If the Prime Minister of any Dominion had some particular matter close to his heart what more natural than an attempt to line up behind it the moral backing of so imposing a body as the Imperial Conference? But in most cases there was some other Prime Minister—or perhaps several of them—unsympathetic and unwilling to take the risk of supporting the proposed policy; and in the absence of unanimous consent it went overboard.

One could hear in London rumours and reports of issues which were to be brought up in the Imperial Conference. Doubtless they were brought up; but they never emerged; they fell victims to the exercise of the *liberum veto*. Thus it was pretty generally understood that there was a combination by the First Lord of the Admiralty naval advisers, and the representatives of Australia and New Zealand to get a Conference declaration in favour of the Singapore scheme; but all that appears in the report is a statement that the Conference 'takes note' of the interest taken by India, Australia, and New Zealand in 'the provision of a naval base at Singapore'. The inference is reasonable that objection was taken by some of the governments to committing themselves to an enterprise about which there is great diversity of opinion in Great Britain; and which is not likely to be gone on with if there is a change of government.

One heard that the Conference was to be asked to take a strong line on the European situation with special reference to French obduracy; to consider the advisability of requesting each Dominion to indicate the extent and character of the expeditionary force it could supply in the event of war; to map out some general scheme of naval defence with fairly definite suggestions as to the establishment which each country should accept; to formulate a Near East policy to include approval of the Lausanne treaty and definite declarations as to the extent and nature of the reservations to be made to Egyptian

sovereignty; and in particular formally and definitely to affirm what had been suggested in 1921, that the British Foreign Minister in all his dealings with foreign nations should speak for all the British nations with the assurance that they stood behind him. It was understood that the Foreign Secretary was to put forward the view that he wished in international negotiations to be able to make it plain that he spoke for all the nations of the Empire; the effect, it was held, would be to make his voice and influence more powerful.

Most of these questions never emerged from the Conference, or if they did the conclusions set out in the report are expressed in such very general terms as to be not much more than a vague expression of opinion.

The method followed by the Conference in dealing with issues was thrown open to public inspection with respect to only one question—that of preferential tariffs. This matter came before the Economic and not the Imperial Conference, but as it was one of the chief questions and, moreover, one essentially political, there was a full attendance of Prime Ministers; the Economic Conference became, so far as this issue was concerned, the Imperial Conference in fact. Mr. Bruce put forward a definite proposal for a preferential arrangement of some kind by Great Britain in favour of Dominion products. He offered the choice of five separate courses: (1) A tariff on food-stuffs and raw materials with a preference to the Dominions. (2) This tariff and preference to operate on a sliding scale, coming into effect whenever prices fell below a certain point. (3) Subsidies to Dominion producers. (4) Control of imports from non-British countries by a system of licences. (5) The purchasing of all foreign supplies by a national purchasing board which would buy only for the shortage that might exist after all available Dominion products had found a market.

Now take note of what happened to this elaborate proposal. The British representatives at once bowled out the first two suggestions, proposing as an alternative the comparatively small list of preferences which they said could be offered without going outside the limits of Britain's existing system. These limited preferences were, it was understood by the Conference, to be ratified by the British Parliament at the November session; but the unexpected dissolution and the defeat of the Baldwin Government leaves these engagements of the Baldwin Government at the mercy of a new and hostile Parliament. The fruits of the Economic Conference, so far as they relate to preference, may thus be entirely lost.

South Africa, by the speeches both of General Smuts and Mr. Burton his colleague, while accepting the proffered preferences with thanks, dissociated itself from any attempt to induce Great Britain to change her fiscal policy along the lines suggested by Mr. Bruce. Mr. King and Mr. Graham took the same position on behalf of Canada.

Mr. Bruce's three remaining suggestions were referred to a committee which found against them on the ground that they were impracticable. There was a debate upon the finding of this committee. Mr. Bruce voiced his disappointment quite plainly, and at the end of his speech asked the Conference to adopt a resolution calling for an extension of the policy of Imperial preference 'inaugurated by Canada in 1897 as the most effective means of developing the resources of the British Empire as a whole'. This was ardently supported by one of the British Ministers, but the Conference thought it unwise and inexpedient to adopt it. Mr. Burton of South Africa in this debate made a notable declaration: 'We claim', said Mr. Burton, 'the right in our Dominion to settle our own fiscal policy, and therefore we do not claim any right whether by actual motion or even by "methods of education" to interfere with the right of the British people here to settle their own fiscal policy for themselves.' The upshot was that the Conference merely reaffirmed the preference declaration of 1917.

This illumination of the Conference in action shows its limitations and makes clear the reason why it can never function as a cabinet or government. It can only be what it termed itself in the last paragraph of its statement on foreign policy, 'a Conference of representatives of the several Governments of the Empire', and its conclusions, which in themselves are only suggestions to the Governments represented, can only deal with matters upon which there is complete agreement. The unhappy consequences of adoption by the preceding Conference under pressure from Mr. Sastri of a resolution outlining policy with respect to the franchise for Hindus in Dominions and Crown Colonies were regarded as a warning to be careful not to make engagements which might later give rise to grievances based upon a charge that they had not been kept. There was here too a warning against the adoption by the Conference of resolutions with one or more of the Dominions standing out. South Africa's refusal to accept the Sastri resolution in 1921 gave rise to a bitter debate both in the Conference and in the London press between General Smuts and Sir Tej Sapru, who represented the Indian Government. The latter worked himself up to the point of declaring that this issue might destroy the Empire. 'I tell him', he said to General Smuts, 'that if the Indian problem in South Africa is allowed to fester much longer it will become a question of such gravity that on it the unity of the Empire may founder irretrievably.'

The import of these developments was not lost upon the members of the Conference, most of them experienced public men. They realized that the plan to make the Conference an Imperial Government of sorts meeting at brief intervals to get reports and give instructions as to policy had definitely broken down; and without advertising the fact to the world or even perhaps admitting it to themselves, they

reverted to the earlier conception of these gatherings as Conferences in the proper meaning of the term. When the Conference broke up there was no suggestion that the Dominion Premiers should hurry home, mend their fences, and hasten back to London to have another spell at policy making for the Empire. The next Conference lies some distance in the future and when it meets it will probably be to consider constitutional developments within the Empire and for the purpose of permitting a free and informal interchange of views between the public men of the British nations, the value of which no one is likely to disparage. Nor is the experiment of the Economic Conference likely to be repeated. The matters brought before it were mostly of two classes: Questions which were too big for it or questions that were too small for it. Many of the things that were solemnly discussed by Prime Ministers assembled from the four corners of the earth were administrative questions that could have been dealt with adequately and quietly by much less pretentious bodies.

The virtual failure of both Conferences to function as expected by those who saw in them an instrument of government revives problems which they expected to see dealt with by these means. The question of foreign policy for instance. The findings of the Conference on this point are hardly more than declarations of general principles. The theory put forward by Mr. Lloyd George, when Premier, and by Lord Curzon, that the Dominions are responsible for the actions and decisions of the British Foreign Minister by virtue of 'consultation' which consists chiefly of getting diplomatic news by mail long subsequent to its appearance in the public prints was, it is an open secret, expressly repudiated by the Canadian Government. It is, however, obvious that there is need for some machinery for consultation and action which will remain latent when it is not required but will be available when the need arises. This need the Conference doubtless recognized, but it did not feel itself equal to attacking the problem. This will go over to the next Conference which will be of necessity a constitutional conference unless, as may happen, some Dominion solves it for itself and presents the Empire with an accomplished fact.

There was some adumbration of the solution in the one actual achievement of the Conference—the memorandum setting forth the treaty-making powers of the Dominions. It is a definite recognition that they have the right and the power to look after their own treaties, which implies looking after their own foreign affairs. There is the proviso that each nation shall keep the other British nations advised so that when questions arise in which one or more of them are interested there can be joint or common action. This clearly calls for an internal diplomatic organization of the Empire enabling each nation to consult directly with every other nation; and it involves the scrapping of the present obsolete system by which the Colonial

Office and the Governor-General constitute the only agency for co-ordination.

There was some discussion in the Conference as to the status of the Governor-General, arising over a controversy between the present Canadian Government and the Governor-General's office as to where the control of state papers relating to external affairs rests. There was no support for the view that these papers are under the control of the Governor-General as an official of the British Government; the Prime Minister of one of the other Dominions characterized it as medieval. The Governors-General are thus becoming simply representatives of the King; not of the British Government; and the work which they have been doing as agents of the British Government will have to be taken over by other agencies. Part of this problem, too, is the question of the status of the Dominion High Commissioners in Great Britain; at present they seem to be regarded simply as expatriated civil servants. The Conference side-stepped this question too; it simply showed some concern over the undefined social position of these High Commissioners.

When the internal diplomatic organization of the Empire, thus faintly outlined, comes into existence, nine-tenths of the questions which are now allowed to accumulate to clutter up the agenda of Imperial Conferences will be settled as they arise quietly and expeditiously. There will still be a place for Imperial Conferences—to be held upon opportune occasions when it is desirable to signify to the world the moral solidarity of the British peoples.

By a paradox the Imperial Conference may be accounted a success by virtue of the things it declined to do. And further it has one substantial achievement to its credit: the formal documentary recognition of the right of the Dominions to look after their own external affairs.

### 3. TREATY POWERS OF DOMINION GOVERNMENTS

(*Canadian House of Commons Debates*, March 21, 1924,  
pp. 550-1)

Right Hon. ARTHUR MEIGHEN (Leader of the Opposition): Before the Prime Minister closes, I would like to ask first this question: Does the treaty entirely fail of effect if it should be that the Parliament of any single one of the Dominions fails to ratify it?

Right Hon. W. L. MACKENZIE KING (Prime Minister): I assume that the British Government would reconsider the present wording of the treaty if any of the Parliaments of the British Empire should refuse to approve it, possibly exempting the particular country concerned from the provisions of the treaty; but I should expect that in this case a question of that kind would not be apt to arise.

Mr. MEIGHEN: There are two other questions on another point which the Prime Minister referred to, namely, the point of the



formality of the execution. First, how is it determined whether a treaty is bilateral, affecting one part or Dominion alone? What precautions are taken to make sure of that? Second, in the event of its being found to be a bilateral treaty affecting one part alone, upon whose recommendation does His Majesty act in authorizing the execution by the appropriate Dominion representative?

MR. MACKENZIE KING: With regard to the first question which my right hon. friend has asked: How is it ascertained that a bilateral treaty applies to one particular part of the Empire or more than one, I would answer that that fact would be ascertained by the terms of the treaty itself, its subject-matter, and by conference between the different parts of the Empire. The paragraph in the report of the Imperial Conference which deals with the subject of negotiation of treaties, contains, I think, what will answer my right hon. friend's question. The paragraph reads:

(a) It is desirable that no treaty should be negotiated by any of the governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

(b) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other governments of the Empire likely to be interested are informed, so that, if any such government considers that its interests would be affected, it may have an opportunity of expressing its views, or, when its interests are immediately involved, of participating in the negotiations.

If that course is pursued, I think it will soon become apparent to any particular self-governing Dominion or the Government of the United Kingdom, whether the treaty which it proposes to negotiate is one that concerns only one part of the Empire or more than one part. In these, as in all matters, common sense has to govern in the last degree; hard and fast lines cannot be laid down; but the broad intelligence that is usually applied to matters of this sort would soon, I think, make it quite apparent and clear whether a self-governing Dominion or the Government of the United Kingdom would be justified in regarding a treaty as imposing obligations only upon itself.

As to the second question which my right hon. friend has asked—on whose advice does His Majesty act in ratifying a treaty, was it?

MR. MEIGHEN: No, in a case, for example, of a treaty which, after the conference, the other Dominions and the United Kingdom should agree affected Canada alone. In that event, some Canadian is authorized by His Majesty to sign. Upon whose advice does His Majesty act in authorizing the execution, thus approving the terms of the treaty?

MR. MACKENZIE KING: In this report of the Imperial Conference is mention of the legal adviser of the Foreign Office, who was present

when the particular matter to which my right hon. friend refers was discussed at a subsidiary conference. His name is Sir C. J. B. Hurst. Perhaps I can best illustrate the point of view which was expressed at that time, by recalling, as best I can at the moment, an answer made by Sir Cecil Hurst to a question that was asked by one of the Dominion Prime Ministers. It was in the nature of a rhetorical reply. In the event of advice being given to His Majesty which might prove to be not proper advice, and the necessity should arise for impeaching the Minister or Prime Minister who had given it, would it, asked Sir Cecil, be the British Prime Minister or the Secretary of State for Foreign Affairs of Great Britain, or the Minister or Prime Minister of the Dominion concerned against whom impeachment proceedings should be properly started? That question was put in that way to elucidate where the responsibility began and where it ended. I gathered, I think rightly, that the interpretation which the Foreign Office placed upon the matter to which my right hon. friend just referred is this, that the Government of the Dominion which was tendering the advice in such a case was the Government that was responsible; that it was advising His Majesty direct in regard to matters which were of sole concern to the Dominion; that in the transmission of that advice the British Government was acting as the channel through which that advice was transmitted, but was not the Government which was formally tendering the advice.

Mr. MEIGHEN: I understand, then, that the Prime Minister intimates that for the sake of approving of a certain treaty a Canadian should be appointed to execute it and that the British Government itself would entail no responsibility; in other words, that His Majesty would act solely on the advice of his Canadian Privy Council.

Mr. MACKENZIE KING: I take it that the view of the British Government is that it is prepared to trust the Governments of the self-governing Dominions 'all in all or not at all' in this as in other matters; and that on a matter in regard to which a Dominion has a right to advise His Majesty direct, such as the question of who should be appointed to sign a particular treaty which comes within the group of bilateral treaties to which I have referred, which impose obligations on only one part of the Empire, the responsibility shall rest with that particular Government and not with the British Government.

Mr. MEIGHEN: If such is the case, and if the approval of the British Government is not at all essential, is not indeed obtained, why does the transmission take place through the British Government and not through His Majesty direct?

Mr. MACKENZIE KING: I think my hon. friend will see that these are all matters of constitutional development. Up to the present time all communications have gone to His Majesty through the British Government. It will also be seen that it is obviously desirable to

have some central agency or channel through which all communications may pass and where they may be noted. I think it would be palpably unwise to have different parts of the British Empire communicating direct with His Majesty, without any knowledge on the part of other parts of the Empire that such advice was being given in that way. I consider it advisable that in the working out of a great constitutional evolution—for that is really what is involved in these matters—steps should be taken slowly and with great caution.

Mr. MEIGHEN: I take the responsibility of stating the situation as I understand it, and which I think is a more correct statement of the actual constitutional result. The function of the British Government will consist in making a recommendation; the wording of the transmission to His Majesty will be a recommendation. I do not think the Prime Minister would venture to deny that. The British Government having been first apprised of the terms of the treaty and having agreed that the matter is purely one that concerns Canada, the recommendation will in every case be cheerfully given; but it will signify to His Majesty the approval by the British Government of the treaty.

Mr. MACKENZIE KING: My right hon. friend is always prone to assert his own views as against the views of every one else. I have given him my understanding of the situation, arrived at after a conference with the British authorities and the Prime Ministers of the other Dominions in the presence of Lord Curzon who as Secretary of State for Foreign Affairs presided, at a subsidiary conference of the Imperial Conference held expressly for the purpose of considering these very matters. As I have intimated, when the matter was discussed, the Conference had the benefit of advice from the legal adviser to the Foreign Office, Sir C. J. B. Hurst, who is perhaps the greatest authority on international law in the world. I believe I have accurately stated the position; it is certainly the basis upon which this Government is proceeding.

#### 4. DEBATE ON THE TREATY RESOLUTIONS

*(Canadian House of Commons Debates, June 21, 1926,  
pp. 4758-83)*

Right Hon. W. L. MACKENZIE KING (Prime Minister) moved:

Whereas the Imperial Conference of 1923 recommended for the acceptance of the Governments of the Empire represented that the following procedure should be observed in the negotiation, signature, and ratification of international agreements:

The word 'treaty' is used in the sense of the agreement which, in accordance with the normal practice of diplomacy, would take the form of a treaty between heads of States, signed by plenipotentiaries provided with full powers issued by the heads of the States, and authorizing the holders to conclude a treaty.

## I

## 1. Negotiation.

(a) It is desirable that no treaty should be negotiated by any of the Governments of the Empire without due consideration of its possible effect on other parts of the Empire, or, if circumstances so demand, on the Empire as a whole.

(b) Before negotiations are opened with the intention of concluding a treaty, steps should be taken to ensure that any of the other Governments of the Empire likely to be interested are informed, so that, if any such Government considers that its interests would be affected it may have an opportunity of expressing its views, or, when its interests are intimately involved, of participating in the negotiations.

(c) In all cases where more than one of the Governments of the Empire participates in the negotiations, there should be the fullest possible exchange of views between those Governments before and during the negotiations. In the case of treaties negotiated at international conferences, where there is a British Empire delegation on which, in accordance with the now established practice, the Dominions and India are separately represented, such representation should also be utilized to attain this object.

(d) Steps should be taken to ensure that those Governments of the Empire whose representatives are not participating in the negotiations should, during their progress, be kept informed in regard to any points arising in which they may be interested.

## 2. Signature.

(a) Bilateral treaties imposing obligations on one part of the Empire only should be signed by a representative of the Government of that part of the Empire in respect of which the obligations are to be undertaken, and the preamble and text of the treaty should be worded as to make its scope clear.

(b) Where a bilateral treaty imposes obligations on more than one part of the Empire, the treaty should be signed by one or more plenipotentiaries on behalf of all the Governments concerned.

(c) As regards treaties negotiated at international conferences, the existing practice of signature by plenipotentiaries on behalf of all the Governments of the Empire represented at the conference should be continued, and the full powers should be in the form employed at Paris and Washington.

## 3. Ratification.

The existing practice in connexion with the ratification of treaties should be maintained.

## II

Apart from treaties made between heads of States it is not unusual for agreements to be made between Governments. Such agreements, which are usually of a technical or administrative character, are made in the names of the signatory Governments, and signed by representatives of those Governments, who do not act under full powers issued by the heads of the States; they are not ratified by the heads of the States, though in some

cases some form of acceptance or confirmation by the Governments concerned is employed. As regards agreements of this nature the existing practice should be continued, but before entering on negotiations the Governments of the Empire should consider whether the interests of any other part of the Empire may be affected, and, if so, steps should be taken to ensure that the Government of such part is informed of the proposed negotiations, in order that it may have an opportunity of expressing its views.

And whereas it was further agreed that the existing procedure in relation to ratification of treaties was as follows:

(a) The ratification of treaties imposing obligations on one part of the Empire is affected at the instance of the Government of that part.

(b) The ratification of treaties imposing obligations on more than one part of the Empire is effected after consultation between the Governments of those parts of the Empire concerned. It is for each Government to decide whether parliamentary approval or legislation is required before desire for, or concurrence in, ratification is intimated by that Government.

This House approves of the procedure proposed for the negotiation, signature, and ratification of treaties and conventions, and considers further that before His Majesty's Canadian Ministers advise ratification of a treaty or convention affecting Canada, or signify acceptance of any treaty convention or agreement involving military or economic sanctions, the approval of the Parliament of Canada should be secured.

In connexion with the first part of the resolution requesting approval by Parliament of the resolution adopted at the Imperial Conference of 1923 respecting the negotiation, signature, and ratification of treaties, I would say that at the Imperial Conference this resolution was unanimously approved by the Governments represented there. It was approved by the Government of the United Kingdom of Great Britain and Ireland, and by the representatives of the Governments of Australia, New Zealand, South Africa, Newfoundland and the Irish Free State and Canada, as well as by the representatives of India. In the circumstances, therefore, I think there will be little difficulty in finding general acceptance of the resolution in this Parliament. It may, however, be advisable to put on record the reference made in the report of the Imperial Conference itself as to the manner in which a decision was reached with respect to this particular resolution.

I might anticipate the reading of that particular paragraph by recalling to the House the discussion which we had in this Parliament in a previous session with respect to the negotiation of a treaty with the United States having to do with the conservation of the halibut resources on the Pacific Coast. Hon. members present at that time will recall that the Government of the day, the present administration, took the view that as that treaty affected only this part of the Empire and related to a matter of mutual concern to the great republic to the south and ourselves, it was right and proper that the negotia-

tions should be conducted by Ministers of the Crown representing the Government of Canada, and that the Ministers so conducting the negotiations should be given full powers by His Majesty, and that the same rights which existed with respect to the negotiation of the treaty should also exist with respect to its signature and with respect also to its ratification. In other words, that as it was a treaty which concerned only one part of the Empire, the part of the Empire alone concerned was the part which should undertake and carry through the negotiations and advise ratification.

The consideration of the Halibut treaty gave rise, as I have said, to some discussion in Parliament and to a difference in the point of view as between the parties as to whether the Government in thus asserting Canada's position was perhaps not going too far in placing upon the shoulders of its Ministers obligations which theretofore had been exercised by either ambassadors or Ministers of the home government. There was a considerable discussion here, considerable discussion in the press of this country and in the Old Country as to the whole position, the significance being as to whether or not it marked a departure in the negotiation of treaties. That was how the matter came to come before the Imperial Conference.

I shall not go into the discussions which took place at the Imperial Conference with respect to that matter. All I wish to say to the House at the moment is that the Canadian position as taken was maintained absolutely by the Imperial Conference as a whole. Not only did the Ministers of the other self-governing Dominions take the position, in giving their assent to the resolution, that what Canada had done with respect to that particular treaty was done in a right and proper way, but the Conference went further and said that with respect to similar classes of treaties in the future the procedure there adopted should be the one to be followed.

I have already spoken of the Halibut treaty, which has been signed and ratified prior to the meeting of the Imperial Conference. The next treaty to be negotiated, signed, and ratified in accordance with the proceedings therein set forth was the commercial treaty with Belgium. I might say, in passing, with respect to the signature of that treaty that it was the first treaty in the history of the Dominion to be signed in Canada by Canadian Ministers of the Crown holding full powers from His Majesty to sign in his name. The first treaty of the kind to be signed in Canada, the Halibut treaty, had been signed by Ministers of the Crown of Canada holding full power from His Majesty to sign in his name, but it was signed at Washington, and not at Ottawa. The commercial treaty with Belgium has the historic significance of being the first treaty approved by this Parliament, negotiated and signed in Canada, with the full powers given by His Majesty to Canadian Ministers to act on his behalf.

The other treaties with the United States which were signed since the resolution of the Imperial Conference are the convention for the purposes of suppressing smuggling operations along the international boundary, and preventing the violation of the laws regarding narcotics, which was signed at Washington on June 6, 1924, and ratifications exchanged at the same place on July 17, 1925. A supplementary convention to provide for extradition on account of crimes against the laws for the suppression of traffic in narcotics was signed at Washington on January 8, 1925, and ratifications were exchanged on July 17, 1925. On February 24, 1925, a convention between Canada and the United States was signed at Washington providing for the regulation of the levels of the Lake of the Woods, ratifications being duly exchanged at Washington on July 17, 1925. At Washington on the same day a treaty was signed to define more accurately the international boundary between the two countries, and ratifications were exchanged at Washington on July 17, 1925. . . .

The second part of the resolution asks the approval of Parliament to one particular form of procedure with respect to the ratification of the treaties. . . . The act of ratification is an executive act, an act performed by the Sovereign. It is performed by the Sovereign, however, on the advice of his Ministers, that may be regarded as sufficient, or there may be a limitation placed upon Ministers before advising ratification—such a limitation as is suggested in the present resolution, namely of approval by the Parliament of the country in the first instance. In the resolution of the Imperial Conference it was stated that the procedure with respect to ratification was to remain as it had existed theretofore. That meant that it was optional with the Parliaments or the Governments of the different countries concerned to decide whether or not ratification should be on the advice of the Ministry solely, or whether it should be upon the approval of Parliament in the first instance. The present Government, in the case of Canada, believes that it will help to avoid embarrassments and dissensions, that it will make for greater unity and for greater security within the Empire in the long run, if the general practice is adopted with respect to important treaties such as involve military and economic sanctions of approval by Parliament of such treaties in the first instance preceding advice on the part of the Ministry favourable to ratification.

(Part II), hon. members will observe, relates more especially to agreements which are of a technical or administrative character. Agreements of that character are not primarily being considered in this resolution. This resolution has been drafted so as to relate specifically to those treaties which involve military and economic sanctions. However, the House is asked to approve of the resolution of the Imperial Conference with respect to treaties of a technical or

administrative character, in so far as the resolution places the same obligation upon the Governments concerned to inform other Governments interested as the preceding part does. The resolution was submitted to the full Conference and unanimously approved. . . . The Imperial Conference resolution states it is for the Government to decide whether parliamentary approval of legislation is to be required before a desire for or concurrence in ratification is intimated. In other words the Imperial Conference, composed as it was of representatives of all parts of the Empire, took the view that it was not only proper but right that each part of the Empire should decide for itself with respect to the ratification of treaties whether or not it desired to have in the first instance the approval of Parliament. The present Government by this resolution is asking Parliament to approve of a course of procedure which will involve with respect to treaties, involving military and economic sanctions, the approval of Parliament before the Government of the day agrees to any obligation implied in the treaty being undertaken in the name of the country.

Mr. HENRI BOURASSA (Labelle): . . . I do not know what was in the minds of the framers of this resolution; but, I take it to be this. The former part of this paragraph applies to treaties and conventions in which Canadian interests are specifically dealt with; and therefore such treaties and conventions ought to be governed by the procedure which we are called upon to ratify to-day. But, in addition, the Government invites the co-operation of Parliament and a declaration by Parliament that no treaty, convention or agreement, whether Canada is mentioned or not, but involving military or economic sanctions, shall be accepted by the Government of Canada without the approval of Parliament. This is indeed much broader, and much more to the point. It means that the British Government, answerable as it is to only one Parliament in the Empire, will be now warned in advance that it cannot count upon the support of Canada, in any matter of external policy, unless the Parliament of Canada has signified its acceptance and approval of such policy. . . .

. . . Why not go back to the old common-sense policy of our forefathers and think of the situation of Canada—Canada first and last. It has been said that that was a parochial policy. Perhaps it was; but it had at least this advantage, that it permitted all Canadians of various races and provinces, of different political parties, to agree at least upon certain things, although they disagreed upon many things; and one of those basic things upon which they agreed, and which was never disputed, was that Canada had no moral or political duty to perform towards the Empire, beyond making the necessary preparations to defend her own territory as against any possible attacks from the enemies either of Canada or of England.

Mr. WOODSWORTH: May I ask the hon. gentleman whether the more recent commercial and financial relations in which Canada finds



herself involved do not make it very difficult to maintain the older isolationist's policy?

Mr. BOURASSA: I do not call it an isolationist's policy, Mr. Speaker. I call it the exercise of our responsibility according to our situation, political, geographical, and economic. In the second place, I call it the necessary reaction against the absolutely false theory that there must be one Imperial policy, that we must act on the principle: 'United we stand, divided we fall.' How can it be explained that the Empire was never so united as when it lived to the opposite principle? Not long after the American rebellion, the British statesmen made up their minds that it was useless for them to dictate a policy to their colonists in America, and later on in Oceania and in Africa. It was recognized that the only policy for the Empire, in view of its geographical composition, was that of unity upon matters in which there could be a common view as between the various component parts of the Empire, but absolute liberty in all matters in which local interests must prevail over Imperial interests. But once that man of, in a sense, genius, but evil genius, once Mr. Chamberlain had made up his mind that the British Empire must be established on a basis copied from the old Roman Empire or more servilely copied from the modern German Empire, the moment British Imperialists attempted to turn the British Empire, with all its principles of local autonomy and freedom, into a mere replica of the Roman and Prussian Empires, from that moment you had disputes, from that moment you had quarrels in Canada as between the Imperialists and the nationalists. From that moment I, for one, began to think that a great number of my English-speaking fellow-citizens were disloyal to Canada, and they no doubt thought that I was disloyal to the Empire. Why? Because we had abandoned the only safe basis upon which you can make one country of this great Dominion, upon which you can maintain peace and harmony between the various British communities: That is, where we can agree, very well, let us agree; but where we cannot agree, let us agree to disagree.

One Imperial policy! I ask any hon. member in this House: Have we the same interests in Irak or Mosul that the oil-hunters of England have? Are hon. members prepared to demonstrate to their constituents that we have the same duty to perform that Great Britain has in the maintenance of all these small treaties which have been negotiated by her with other countries? Have we the same interests in the coloured races question that they have in South Africa? Are we obliged to take the same colonial, or national, or Imperial view on the relations between South Africa and India, which General Smuts, or General Hertzog, is bound to take? One Imperial policy! Those gentlemen from British Columbia who boast of their Imperial devotion, are they prepared, for the sake of the interests of England, to allow Hindus and Japs to come to that province and settle there?

No, they are not. That is one point upon which their Imperial feelings must be subordinated to their local, provincial, and economic interests. Likewise, when they feel the urge of British blood and British pride, do they not realize that the Irish-Canadian, and the French-Canadian, and the Canadians of various origins that come from other countries than Britain, cannot respond to that feeling of pride? Suppose Canada had been first settled by English settlers, but after a period of long warring, it had become a French colony; that after many bickerings with the French Government, certain terms of agreement had been arrived at, one of which being that there would be no predominant race in Canada, and that Canada would not be obliged to share in France's wars in Europe and Africa? How would you respond then to the appeal of blood, especially in a case where France would be engaged in war against England? What would you think if we, the French-speaking majority, would say 'This is a French country, we are all one under the French flag, and you English-speaking Canadians must be prepared to fight for France against the country of your origin, England or Scotland, as the case may be, with the same feeling of devotion that we are prepared to do?' Do you think that there would be justice or political sense in that? Do you think you could build up a united nation upon such a policy? No, you could not. Likewise in South Africa you cannot adopt a purely English or purely Dutch policy; it must be a policy which will take in both nationalities. Neither can you have an English policy in India; the policy pursued must be a broad British policy. And the duty of the British Government is to endeavour to make the Australian and the New Zealander understand that great responsibilities having regard to British power—not to the extent, of course, of causing the suicide of Australia and New Zealand—enter into the question and that consideration must be paid to the point of view of trying to help Great Britain herself. That is my conception of inter-Imperial relations. Do you think such a view is wrong? I think a policy of that kind is safer than the one Imperial policy idea. . . .

That Europe should be reaping the results of a policy of national hatreds, of economic rivalries, which perhaps is unavoidable under such conditions as prevail there, is no wonder. But why impose upon this country the consequences of that policy? . . . Just as the Englishman, the Frenchman, and the German, when dealing with representatives of other nations, thinks of himself and his country first, let us say: 'Canada first'. The Englishman thinks of England ten times before he thinks of Canada, and he does well. It is his duty. He frames his foreign policy to suit the situation of his country. Of course, he has an eye to the concerns of Canada and Australia; but Sir, if we do not approach any of these subjects with the idea that the Englishman thinks of himself first, and the Empire second, we will never be in a position to deal on a par with England. . . . The

Englishman thinks of himself, therefore let us think of ourselves. When we approach those great issues of peace, war, and foreign affairs in that spirit, we will realize that Canada is British by accident but American, geographically, for ever. . . . Canada is and always will be a country on the continent of North America, and the time is coming, sooner or later, when the people of Canada will realize the truth of that fact. When that time comes, treaties and constitutions will not stand five minutes.

From a Canadian point of view or from a British point of view, let us serve notice to the world at large, not in any spirit of animosity towards Great Britain, but in full consciousness of what we owe to our people, that Canada is prepared to uphold morally any real move for peace which may be taken in Europe or anywhere, but that Canada is not prepared to arm her youth and to spend her millions for the sake of any foreign policy with which we are not connected by necessity and from which Canada is disconnected by all the exigencies of her natural situation. . . .

I am convinced more deeply than ever that if we are to save the future of this country; if we are to save Canada from internal dissension, from external absorption, from the turmoil of European politics or from American absorption, it will be by bending all our energies, by devoting all our talent, by doing all we can to make the different sections of this country one united people for Canada. So far as England and the Empire go, I am not in a hurry to lose that connexion. As I have often said before, I appreciate our connexion with England; but our best manner of appreciation is to show the rulers, the business men, and diplomats of England that we are just as intelligent as they are; that we realize our situation just as they realize theirs, that we have a duty to perform to Canada just as they have a duty to their own country. If Imperial association can last and if an Imperial policy can be fruitful of results, it will be through each portion of the Empire thinking of itself first, not through any selfish spirit of absolute disinterest, but in order to start on a sound basis of internal and external policy and join hands with England every time her rulers make a move for real peace in the world, but also to resist any attempt to drag us once more in foreign wars. We should join hands, I repeat, every time England may associate with any group of nations in the interest of peace, when her own interest lies in peace; every time she makes for justice, because her interests lie in the preservation of justice; every time she prevents or endeavours to prevent any nation from dominating, because it is to her interest that no nation should dominate. Then, I say as a Canadian and a British subject, I approve of that move, and I give it my moral support. But to subscribe to undefined and unlimited engagements, or even defined and limited engagements which go beyond the sphere of our action, which go beyond the natural laws which should govern our policy just

as they govern the policies of other nations, is wrong. There I say British, yes, but Canadian first; if necessary, secession from Britain rather than the sacrifice of Canada; Canada in partnership with Britain so long as it is possible, but Canada first and for ever.

F. *RECOGNITION OF SOVIET RUSSIA AND THE RUSSIAN TREATIES, 1924*

THE POSITION OF AUSTRALIA

(*Journal of the Parliaments of the Empire*, October 1924, pp. 785-6)

August 13. Right Hon. S. M. BRUCE (Prime Minister): Action in three directions has recently been taken by the two Governments concerned, namely: (1) The recognition of the Soviet Union Government in Russia by the British Government, (2) the making of a general Treaty on outstanding questions between the two Governments, and (3) the making of a commercial Treaty. As to the first matter, action was taken by the present British Government immediately after it assumed office, without consultation with the other self-governing parts of the Empire. Technically, this was not a compliance with the now established principle of consultation with the Dominions on all questions of Imperial foreign policy. But as the Commonwealth Government did not consider that the interests of Australia were affected by, or that any complications involving Australia were likely to arise from, its not being consulted, it made no protest, particularly in view of subsequent assurances which it has received from the British Government of its desire for the closest consultation, showing that the course adopted on this occasion will not form a precedent for action in the future.

The general Treaty that has been made deals with the questions outstanding between Great Britain and Russia. A full summary of its text was cabled to the Commonwealth Government, and later a full summary of the alterations made in the final text, as signed, was cabled, with an intimation that copies of the Treaty were being forwarded by mail. In making this Treaty, the procedure for the negotiation of treaties laid down by the Imperial Conference last year was followed. . . . The subject-matter of the Treaty is confined entirely to questions which were at issue between Great Britain and Russia, and the interests of Australian nationals are not affected by the arrangements that have now been made.

The Commonwealth Government was kept informed throughout the negotiation of the Treaty of the steps that were being taken, and felt that the matter was one for determination by the Government of Great Britain, as it only was concerned. All that I wish to say about the commercial Agreement is that in such arrangements it is for each of the self-governing parts of the Empire to make such agreements with foreign countries as it may deem desirable. This right is now

fully recognized, and was confirmed at the last Imperial Conference. Naturally, Australia does not feel that she should interfere in regard to any commercial agreement that Great Britain might contemplate, nor would she tolerate interference by Great Britain with her proposed commercial arrangements. The Commonwealth Government felt that this commercial Treaty was a matter in which it had no right to interfere or to express opinions. It has been suggested that this Treaty may detrimentally affect the interests of Australia in the British market. No doubt a commercial agreement by any part of the Empire may affect the commercial interests of other parts; but, as I have already said, the Commonwealth Government has no more right to interfere with the commercial policy of the United Kingdom than the United Kingdom has to interfere with the commercial policy of the Commonwealth. . . . Both Treaties were made between Great Britain and Northern Ireland on the one hand and the Soviet Government on the other. The Dominions incur no obligations under them. Both Treaties are subject to approval and amendment by the British Parliament.

*G. THE INTER-ALLIED CONFERENCE ON THE DAWES  
REPORT, 1924*

I. CORRESPONDENCE BETWEEN THE BRITISH AND CANADIAN  
GOVERNMENTS

*(Canadian Sessional Papers, 1924, No. 309, pp. 5-18)*

*From the Secretary of State for the Colonies to the Governor-General*

London, June 28, 1924.

My telegram dated June 25th. Following from Prime Minister for your Prime Minister. *Begins:*

I have now had an opportunity of going further into the question of the participation of the Dominion Governments in the Inter-Allied deliberations next month. Work of the Conference will be to concert the necessary arrangements for putting the Dawes Report into operation. Conference being restricted to this one subject, question of Inter-Allied debts and problem of securities will not be dealt with. Principal task of the Conference seems therefore likely to be, to agree upon the terms of an instrument, to be signed by the Allies and by Germany, formally binding the parties executing the recommendations of the Dawes Report.

In order to avoid any appearance of wishing to amend the Treaty of Versailles, this instrument might take the form of a protocol.

You will see from above outline of the task before the Conference, that the procedure, as regards the association of the various Governments of the Empire in its work, should clearly be governed by the

principle of the resolution as to the negotiation, &c., of treaties agreed to by the Imperial Conference, 1923. Our suggestion is that a meeting should be held in London of Dominion and Indian representatives, to discuss with His Majesty's Government policy to be adopted at the Conference, and make arrangements for representation.

*From the Governor-General to the Secretary of State for the Colonies*

Ottawa, June 30, 1924.

Following from my Prime Minister for your Prime Minister.  
*Begins:*

Re participation of Dominion Governments in Inter-Allied Conference: Your telegram June 28th was received yesterday (Sunday) and contents considered with colleagues at Cabinet Council to-day. We agree, from outline of the task before the Conference as set forth in your telegram, that the procedure as regards the association of the various Governments of the Empire in its work should be governed by the principle of the resolution as to the negotiation, &c., of treaties agreed to by the Imperial Conference, 1923. In this connexion, we assume that the procedure with respect to the proposed protocol will be that set forth in the case of treaties negotiated at international conferences where there is a British Empire delegation, in which, in accordance with the now established practice, the Dominions and India will be separately represented. . . .

We hope, however, to be able to arrange to have one of our Ministers represent Canada at the main Conference. To effect this, it will be necessary for us to be immediately advised if we are right in the assumption, that, as respects negotiation, signature and ratification of the proposed protocol, principles governing will be same as those regarding treaties negotiated at international conferences as referred to in Section 1, subsection (c) respecting negotiation, and Section 2, subsection (c) respecting signature, of the procedure as set forth in the resolution of the Imperial Conference, 1923. We should like, if possible, to be informed as to this before deciding on the representative to be named to attend the preliminary meeting, as the selection of the latter will necessarily be governed to some extent by the procedure to be observed with respect to our representation at the Inter-Allied Conference. *Ends.*

*From the Secretary of State for the Colonies to the Governor-General*

London, July 3, 1924.

Your telegram dated June 30th. Following from Prime Minister for your Prime Minister. *Begins:*

Your message was considered by the Cabinet July 2nd. As

explained in my message of June 28th, work of the Inter-Allied Conference will be of strictly limited scope. There is no question, for example, of changing the percentage payable to the British Empire on account of sums received by way of reparations (*viz.* 22 per cent.) or of altering the allocation of this percentage, which was agreed at the Imperial Conference of 1921.

Also, not only will the problem of securities not be dealt with, but no military commitments will be entered into. We intend to retain the liberty of action in the event of wilful default by Germany, and not to go further than agreeing, in that event, to consult the Allies as to the nature of the sanctions to be applied.

Generally speaking, it is difficult to see that any special obligations on the Dominions will be entailed.

I thus find it difficult to give a definite answer to that part of your message which deals with the precise application of the principle of the resolution as to the negotiation, &c., of Treaties, passed at the Imperial Conference last year, to the arrangements for representation at the Inter-Allied Conference. We had contemplated that the question of representation should be discussed and settled at the preliminary conference in London, referred to in my message of June 28th. Would you have any objection to this and nominate representative accordingly to attend it? I ought to tell you quite frankly that, in the circumstances, we do see the difficulties in arranging for a separate representative of all the Dominions and India, if this should be desired, since this would result in our total representation largely outnumbering that of Foreign countries.

For this reason we had hoped to consider at the preliminary Conference with the Dominions and India, whether there was any method of arranging to keep our representation down to three.

One method might be the application of the panel system, as arranged at Paris in 1919, but as to this, I should explain that I think my own prerogative will be essential throughout, and probably that of the Chancellor of the Exchequer. Another method might be that the Dominions and India should agree on a single representative, but this would be a departure which, so far as I know, has never been discussed previously, and might very probably be regarded as open to objection.

Whatever system adopted, British Empire Delegation should, we think, remain in session during the Conference, so as to deal with all developments requiring discussion after the Conference has opened. Also our view is that arrangements should be considered as applicable to this Conference only, which, as already indicated, is of a very special character. As regards the general question of the application of Conference resolution on the negotiation, &c., of Treaties, see my message of June 23rd.

Our present view is that the proposed protocol should be signed

on behalf of all Powers represented at the Conference, and that separate signature(s) for the Dominions and India should be included. I should add, however, that it is intended to be an instrument not requiring ratification. . . .

*From the Governor-General to the Secretary of State for the Colonies*

Ottawa, July 7, 1924.

*Re participation of Canada in Inter-Allied Conference.*

Following from my Prime Minister for your Prime Minister.

*Begins:*

. . . If the proposed protocol is to be regarded as coming within the category of treaties negotiated at international conferences where there is a British Empire delegation, and if, as stated in your telegram of June 28th, the principles of the resolution as to the negotiation, &c., of treaties agreed to by the Imperial Conference, 1923, are to apply, there would in our opinion, from the wording of the resolution, appear to be no escape from the conclusion that the now established practice with respect to negotiation in such a case requires that the Dominions and India should be separately represented, and that the existing practice with respect to signature demands signature by plenipotentiaries on behalf of the Governments of the Empire represented at the Conference, the Full Powers to be in the form employed at Paris and Washington.

At Paris and Washington, Canada's representative held a Full Power signed by His Majesty the King in the form of letters patent authorizing him to sign, (quote) for, and in the name of His Majesty the King in respect of the Dominion of Canada, (end quote), and treaties, conventions and agreements that might tend to the attainment of the object of the Conference, the Canadian Government having, by Order in Council, sanctioned the issuance of these Full Powers by His Majesty. . . .

We regret that it will not be possible for Canada to be represented at the preliminary meeting by a member of our Cabinet who is wholly familiar with all the considerations of which we think full account should be taken and who might also serve as Canada's representative at the Inter-Allied Conference. As time, however, will not permit of this, I am to-day cabling our High Commissioner in London, the Honourable Peter C. Larkin, to represent our Dominion at the preliminary meeting. . . .

*From the Secretary of State for the Colonies to the Governor-General*

London, July 11, 1924.

Following from Prime Minister for your Prime Minister. *Begins:*

I have had full and frank talk at Conference with the High Commissioners for Canada, Commonwealth of Australia, New Zealand,



Irish Free State, and the Secretary of State for India, this afternoon Friday, and have explained to them in detail the difficulties which confront us in securing separate representation of the Dominions and India in the same manner as at Versailles and Washington.

It is of most urgent necessity (?) that the Dawes Report should be put into operation without delay, and that the Inter-Allied Conference, which is to deal with nothing but how this can be done, and is therefore not treaty making, should meet as fixed on July 16th.

Under the present arrangements delegations of each of the chief Powers are to consist of three representatives, and even if we were in a position to negotiate an extension now, it could not be fixed up before next Wednesday. In view of the political and economic situation in Europe, that would mean that the Conference would be postponed indefinitely. This would destroy all chances of the Report being put into operation, with disastrous consequences to Europe and indeed the whole world. All that the British Government has striven for would be wrecked and any hope of obtaining financial results from the Treaty of Versailles would be gone. While Australia, if separate representation at the Conference is impossible, and New Zealand are prepared to be represented by a British Minister, instructions of the other High Commissioners present did not enable any definite recommendations to be made. It seemed, however, that the following arrangements were likely to meet the situation best—

- (a) British representatives to keep in continuous consultation with the High Commissioner or other representative(s) appointed by the Governments of the Dominions and India, during the course of the sittings of the Conference.
- (b) Dominion Governments to be kept fully informed by telegraph of Conference proceedings.

I gave the High Commissioners present and the Secretary of State for India following assurance 'Whatever is agreed to now, under exceptional (?) character, this Conference will not be regarded or quoted as a precedent and a statement to that effect will be made by me to the Conference'.

I am quite sure you will appreciate our difficulties, and do your best to help us. Please reply urgently.

... Ramsay MacDonald. *Ends.*

*From the Governor-General to the Secretary of State for the Colonies*

Ottawa, July 13, 1924.

Following from Prime Minister for your Prime Minister. *Begins:* Inter-Allied Conference—Your telegram July 11th was received yesterday, and contents carefully considered by Cabinet at meeting held during day. We are naturally most anxious to avoid any embarrassment to your Government, and it was with this end in view

that when informed by you that Inter-Allied Conference came within scope 1923 Imperial Conference resolution and that in consequence we were being asked to send a representative to a preliminary conference between His Majesty's Government and the self-governing Dominions and India to arrange for representation at Inter-Allied Conference we deemed it advisable to anticipate the possibility of any misunderstanding by stating clearly our position with respect to representation in accordance with the terms of that Resolution. From the statements of your telegram of July 11th it would seem that the preliminary conference was not, as we had been led to believe, so much for the purpose of arranging for representation of the Dominions and India on a British Empire Delegation as for the purpose of informing the Dominions and India of what, in advance of consultation with their representatives, had been decided upon with respect to representation at the Inter-Allied Conference. This is precisely the procedure adopted with respect to representation at the Lausanne Conference to which exception has been taken, concerning which, we have been told, we should have spoken more plainly at the time, and which for many reasons, we had hoped would not be repeated. We regret that we are unable to acquiesce in this method of proceeding, or to depart from the position which we have consistently maintained of having Canada's right to representation at the Inter-Allied Conference determined in accordance with the precedents established at Versailles and Washington, and confirmed by the 1923 Conference Resolution which our Government has formally approved. With regard to possible objection by other countries we deem it sufficient to observe that the British Empire has an absolute right to determine its internal organization which in the relevant aspect has already received international recognition. In case the rules of procedure at the Inter-Allied Conference do not permit the entire British Empire Delegation to be present at the Sessions of the Conference, we are quite prepared to agree that the representation at such Sessions shall be determined from time to time by the Delegation, but we regard as essential to our signature to any protocol or other agreement negotiated at an international conference where there is a British Empire Delegation, representation of Canada on such delegation by a delegate holding full powers in the manner set forth in my previous telegram. In thus stating our position we feel that we are adopting the only course which will commend itself to our parliament. *Ends.*

*From the Secretary of State for the Colonies to the Governor-General*

London, July 15, 1924.

Please communicate following very urgent message from me to your Prime Minister. *Begins:*

In the unavoidable absence of the Prime Minister I had further

meetings this morning with the High Commissioners for Canada, Commonwealth of Australia, New Zealand and Irish Free State. I read to them your message to the Prime Minister of July 13th and replies from the other Dominions which are being repeated to you separately. I am grateful for your suggestion that representation at the Sessions of the Inter-Allied Conference should be determined from time to time by the British Empire Delegation which I interpret as meaning that you think the panel system (which will enable one Dominion representative to be present at the Sessions each day) offers way out of difficulty. This plan certainly seems the best means of meeting the position and I am prepared to take steps accordingly and to arrange for each Dominion representative to be furnished with the necessary full powers.

Please reply to-day in view of the opening of the Conference to-morrow. *Ends.*

. . . . .

*From the Governor-General to the Secretary of State for the Colonies*

Ottawa, July 15, 1924.

Prime Minister desires me to send you following message in reply to your communication of to-day. *Begins:*

Re representation, Inter-Allied Conference.

My understanding of your telegram just received is that you are agreeable to following, as respects Inter-Allied Conference which opens to-morrow, precedent of Paris Peace Conference with respect to representatives of self-governing Dominions on British Empire Delegation, and that procedure to be followed at Inter-Allied Conference as respects British Empire Delegation will be similar to that followed at Paris Peace Conference.

In accordance with this understanding, our Government has to-day passed Order in Council appointing the Honourable N. A. Belcourt as the representative of Canada at the Inter-Allied Conference and requesting issuance to him of the necessary full powers. *Ends.*

*From the Secretary of State for the Colonies to the Governor-General*

London, July 17, 1924.

Following for your Prime Minister. *Begins:*

Your two messages of July 15th in regard to my message of the same day, were read at (?) further meeting with the High Commissioners to-day, at which Senator Belcourt was present.

In order to avoid any possibility of misunderstanding, I want to make it quite clear that the proposal in my message of July 15th was that the Canadian representative should attend the meetings of the Inter-Allied Conference under the panel system in rotation with the representatives of the other Dominions.

This procedure follows that at the Paris Peace Conference in so far as that Conference provided that each Delegation had the right to avail itself of the panel system, but is not in accordance with that part of the rules of the Paris Conference which provided for separate representation of the Dominions and India, in addition to the possibility of their inclusion, if so desired, in the representation of the British Empire by the panel system.

I feel bound to point this out before definite arrangements made for the representation of the Dominions, as I am not sure on reading your telegram whether this position was understood.

I hope very much that my proposal (which has already been accepted on behalf of Australia, New Zealand and India) may be carried out, it being understood of course, that the arrangement is a special one, and governed by the Prime Minister's assurance contained in my telegram dated July 11th.

You will also like to know that it can be arranged for representatives of the Dominion to be present at the meetings of the Inter-Allied Conference on the days when it is not their turn to sit as members of the British Empire Delegation. This will ensure that they are fully acquainted with all that goes on in conference. *Ends.*

*From the Governor-General to the Secretary of State for the Colonies*

Ottawa, July 17, 1924.

Following from my Prime Minister. *Begins:*

In view of representations and assurances contained in your telegram just received, and in order to avoid as far as possible any embarrassment to His Majesty's Government in existing situation and to facilitate as far as may be in our power work of the Inter-Allied Conference, our Government is prepared to accept your proposal of July 15th as interpreted in your telegram of to-day. I am advising our High Commissioner and Senator Belcourt accordingly. *Ends.*

## 2. DISCUSSION IN THE BRITISH HOUSE OF COMMONS

*(British House of Commons Debates, July 29, 1924, pp. 1977-92)*

MR. AMERY: The particular subject to which I should like to draw the attention of the Committee is that of the representation of the Dominions in the foreign policy of the British Empire. . . .

It may be that, looking back upon what occurred at Lausanne, either the Dominions or ourselves should have taken a more definite line in regard to essential principles at the moment these negotiations were opened. I will not go over this ground again. I should, however, like to say a word about the (Inter-Allied) Conference sitting at this moment. It was a little unfortunate that, in connexion with this Conference, it was only at the last moment that a kind of

makeshift arrangement was arrived at. I say makeshift arrangement advisedly, for my right hon. Friend in answering a question the other day practically admitted that it was a makeshift arrangement and expressed the hope that it would not be quoted as a precedent. That arrangement is unsatisfactory for the reason that it is an arrangement under which the Dominions sitting on a panel have full representation in rotation and on other occasions are only present as spectators. I am not going to object to the principle of the panel as such. There may be occasions when it will be convenient for the British Empire to be represented on the panel system, but in adopting the panel system for the Dominions only you are violating the principle of equality of status between the nations of the Empire. If one nation, the United Kingdom, is represented there continuously and of right and the Dominions only have partial representation through the panel the principle of equality of status is violated, but if all are represented on the panel system then the essential principle is preserved. By whatever means this problem is to be solved, whether on the basis of the full separate representation of all the Dominions or on other occasions by Empire representatives nominated by and acting for a British Empire delegation, it is essential that foreign Powers should fully recognize the position. In these matters I hope the right hon. Gentleman will see to it that we are not more tender in regard to the susceptibilities of foreign Powers than with regard to the susceptibilities of the Powers which make up the British Empire. Take the case of a Power like Belgium. The great Dominions took their part in the War no less than Belgium did. They suffered casualties equally with Belgium, they made their sacrifices, and they are no less entitled, if they wish it, to be represented than Belgium. We, at any rate, ought to make it clear to the rest of the world that it must take the British Empire as it finds it and that we cannot diminish the status of our own Dominions in order merely to meet the convenience of other Powers.

Whatever the position with regard to conferences, I should like to say that it is not conferences that matter so much as the period in between them. The Prime Minister said the other day, with regard to Lausanne, that it was only the sixth or seventh chapter of a long history. That is equally true of the present Conference. The question of reparations has been discussed practically without intermission ever since the Treaty of Versailles. It is equally true of all other problems of foreign policy, that you cannot give effective representation to the Dominions at Imperial or foreign Conferences unless they can secure some effective say continuously during the intervals between those great landmarks at which are registered the decisions of the Powers. There are one or two general principles that occur to me as calculated at least, in the long run, to lead to a real solution of the problem. That solution can best be found, I suggest, in some-

how or other enabling the principle of the British Empire delegation, which has worked so well at so many Conferences, to be made permanent in order to secure for the Dominions a continuous say in foreign policy. Short of that, I believe it would be a great help if each of them had its own special agent, or a special representative to find out what the situation is and to convey it to their own Governments under their direct instruction. I have seen, from the point of view of the Colonial Office, how inevitably colourless are the general circulars in which facts are conveyed to the Dominions; how belated they often are, and how sensitive the Dominions are of criticizing these dispatches. If the Dominions had their own men they could rebuke them for sending inadequate messages, or for sending them too late; they could tell them to go to the Foreign Office again and again in order to get information, and in that way each Dominion would be able to have a much more effective say. There is another suggestion which has been made, I see, in the Australian Parliament, and which Mr. Bruce has spoken of with great favour. It is the suggestion of substituting for the present secretariat between conferences some sort of inter-Dominion secretariat, not dependent on any British department, but like the Imperial War Graves Commission responsible to all the Governments. . . .

Mr. LLOYD GEORGE: . . . What was done in 1917, 1918, and 1919, when they (the Dominions) were called practically into the Cabinet, into the Council of the Empire, when they sat on equal terms, when they were just like Members of the British Cabinet, when they sat on its Committees, when they presided over some of its Committees—that was a very great constitutional change. It was a greater constitutional change than we quite apprehended, so much so that it has been difficult to get the Departments quite to accept the full meaning of that change, and they are always going—not deliberately; I am not criticizing them—they are instinctively, from tradition, from the habit of generations, constantly falling back upon the old attitude of this country. They have not quite realized that a new chapter in the British Constitution was written by the War in 1914-18, and certainly a new chapter in the Constitution of the British Empire. It has been put on a totally different footing. The Dominions were consulted, not by dispatches, but by the gathering of their leaders to the Central Council Chamber of Empire.

I do not want to go back to Lausanne, because, as far as I am concerned, I have had my say on the subject, and I would rather not criticize what has recently happened. I think it is a little unfortunate, but the time has not come for discussing that. I do think, however, that it is very important, when one considers some of the difficulties that our well-wishers in the Dominions have in always carrying the whole of their public opinion along with them on Imperial issues, that we should be exceedingly careful not to give the slightest offence, that

we should be exceedingly cautious not to give any handle to those who are ready to make mischief in different parts of the Empire. . . .

That is of the most vital importance, and one can see the importance of it when one reads between the lines of some of the discussions which have taken place in the Canadian Parliament in the course of the present year. Some of the incidents have been unpleasant, and I am certainly not criticizing the Prime Minister of Canada. He has very great difficulties, and he has had to bear that sentiment in mind. My right hon. Friend suggests some kind of machinery, but I am not sure that it is a question of machinery. He referred to a very important discussion that took place in the Imperial Conference in 1921. I am not quite sure whether it has been published or not, but I think I am right in saying that, although in 1917 there was rather a desire for a machine, for an organization, for almost a written Constitution that would make consultation possible, by 1921 the Dominions had unanimously gone back upon that, and I think rightly. Our very best friends were those who opposed it. They felt that it was out of keeping with the spirit of the British Constitution, which has grown from precedent to precedent, which has been built up out of experience, and they were opposed to anything in the nature of a machine for consultation.

I think that is right. The methods ought to be adapted to the conditions of the time. You may, for instance, have a sudden crisis, and it is quite clear that no machine could be brought into operation then. The one great difficulty, of course, is distance, and until you are able by scientific means to shorten the distance and minimize that difficulty, it will always remain. . . .

Mr. THOMAS (Secretary of State for the Colonies): . . . We are faced with the conclusions of the Dawes Report. As the right hon. Gentleman said, here you have the real difficulty when you get such a situation as faced us in that Report. To bring the Dominions, to give them the same representation as we determined on at Versailles, meant that they themselves were to have six representatives. Any one with any knowledge of the European difficulty arising out of the Dawes Report would admit that we could not turn that Conference into a mass meeting. If you were going to be businesslike, you had to make it as small as possible, and the difficulty of that was not only our own difficulty but the difficulty of the other Powers represented. We immediately applied ourselves to the difficulty. We cabled to the Dominions, and said to them: 'Here is our difficulty. We want you to have the same representation as at Versailles, but there is a difficulty for this Conference. Will you help us?' During the whole of these negotiations we made it perfectly clear to them that on no consideration would they be committed in any way by any representatives of the British Government without full discussion and agreement. They all accepted it readily with the exception of Canada and the Irish Free State. We

may as well be perfectly frank in this matter. The strength of the British Empire is that we can be frank with each other without unpleasantness. Mr. Mackenzie King, speaking for his Government, was frank. He said, 'No, I believe that accepting anything less than the principle agreed at Versailles is lowering our status'.

Mr. LLOYD GEORGE: May I suggest that it would have been possible to carry out the Versailles precedent without in the least interfering with the business of the Conference. I can quite understand that when you come to discuss details you cannot have a large body, but, then, whenever there was a plenary session where Roumania, Czechoslovakia, and Greece were represented, the Dominions were put on the same basis as those countries and were always present, and at the plenary sessions the Dominions might have been represented without interfering in the least with the smaller Commissions that discussed the details of business.

Mr. THOMAS: May I recall to the right hon. Gentleman that agreement had been reached as to the number of these various representatives. What we have done is this: Each Dominion sends its representative. When you talk about continuous consultation, no one knows better than the right hon. Gentleman that it does not always follow that the Dominions themselves agree to their particular representative in London being their representative. That is another difficulty. So do not let us think there is no difficulty. One assumes that the High Commissioners speak for them, whereas, as a matter of fact, in this Conference Canada is represented by a member of her own Senate. What takes place is, that practically every day the whole of the representatives of the Dominions meet the Prime Minister, the Chancellor of the Exchequer, and myself at Downing Street. We not only tell each other everything that is going on in all our Commissions, but discuss the whole situation, not as British delegates versus Dominions, but as one united delegation having a common interest, in addition to which, at all plenary sessions the whole of the representatives of the Dominions are present—at every plenary session from the date it opened.

Sir JOHN MARRIOTT: Are they full members?

Mr. THOMAS: Will the hon. Gentleman excuse me. I do not want something to be said abroad in the Dominions which is not absolutely in accordance with exactly what takes place. At every plenary session every representative is present, but at a plenary session there are only four (*sic*) representatives of the Empire, that is two members of the British Government and one representing the Dominions. The others are all present. It is only fair also to say we promised the Dominions, and the Prime Minister read to the conference a clear and definite statement, that this was not to be taken as a precedent or quoted as a precedent for the future, because we desired to make it perfectly clear, not only to the Dominions themselves, but to all



foreign Powers, that this system of representation for our Dominions is not satisfactory.

Mr. LLOYD GEORGE: Let me follow what the arrangement is. I understand that each of the Dominions is not represented at the Conference. There are three representatives, and only one is a full delegate of the Dominions.

Mr. THOMAS: Yes, only one is a full delegate. As my right hon. Friend says, just as in Paris every day, before committing the Dominions to anything there were consultations, so every day here in this Conference there is consultation taking place, and every one knows as much about the case as the other. That, I repeat, in itself is not satisfactory. That, in itself, is not a solution. That, in itself, is something which must be altered, and we are determined to alter it. That is why we are inviting the Dominions to a Conference, which, we hope, will take place in October of this year.<sup>1</sup>

#### H. INTER-IMPERIAL COMMUNICATION, 1924-5

##### CORRESPONDENCE REGARDING THE PROPOSED IMPERIAL CONFERENCE, 1924

(*Parliamentary Papers (Great Britain)*, 1925, Cmd. 2301,  
pp. 5-13)

##### *The Secretary of State for the Colonies to the Governor-General of Canada*

23rd June. Following from Prime Minister for your Prime Minister:

*Begins:* You will probably have seen from Press reports of recent speeches of Secretary of State for the Colonies and myself in Parliament that we are concerned as to adequacy of present system of consultation with other self-governing parts of Empire on matters of foreign policy and general Imperial interest. We fully accept principle of necessity for effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action, founded on consultation, as the several Governments may determine (see Resolution IX of Imperial War Conference, 1917). We also realize that action to be taken as result of consultation whether at or between Imperial Conferences must be subject to constitutional requirements of each country. But we feel, as result of our experience since taking office, that system in practice has two main deficiencies.

First, it renders immediate action extremely difficult, more especially between Conferences, on occasions when such action is imperatively needed, particularly in sphere of foreign policy.

Secondly, when matters under discussion are subjects of political controversy, economic or otherwise, conclusions reached at and

<sup>1</sup> Cf. *infra*, Section H.

between Imperial conferences are liable to be reversed through changes of Government.

Such a state of affairs inevitably leads to ineffectiveness; it also causes disappointment, and doubts are thrown on utility of whole Imperial Conference system.

What the remedy is, it is difficult to say. On the first point, i.e. the importance of securing, on occasion, rapid decisions, particularly on matters of foreign policy, it occurs to us that further examination of the Resolution on Negotiation, &c., of Treaties passed at last year's Imperial Conference might be worth while in order to consider how far that Resolution needs to be supplemented and interpreted, and whether principles embodied in it can usefully be extended to other matters affecting foreign relations.

On the second point, i.e., means of making Imperial Conference Resolutions, whether they relate to economic or other matters, more effective, what is wanted is, I think, as I indicated in a speech in Parliament on 18th June, 'creation of some sort of workable machinery so that the public opinion of the whole of our Commonwealth of States should influence the policy for which the Commonwealth must be responsible'.

We had in view desirability of avoiding party issues when proposing appointment of Economic Committee with a reference framed so as to exclude questions of tariff policy.

One method of bringing about result desired which was mentioned by Secretary of State in recent speech in Parliament is that Imperial Conferences in future should not be confined to representatives of parties in office for time being. When it was contemplated some years ago that a special Constitutional Conference should be held, it was proposed from more than one quarter that such a Conference should be representative of Oppositions as well as Governments. On the other hand we realize that this suggestion is open to the criticism that it would tend to hamper the frank exchange of views and unrestricted inter-communication of confidential information on such matters as foreign policy and defence which have become so outstanding features of recent Conferences.

Another method might be to continue representation of Governments only but to arrange for each Government to obtain from its own Parliament beforehand a general approval, within sufficiently wide limits, of the attitude to be taken up by its representatives. Whilst avoiding the criticism of the first method, this might tend to diminish flexibility of Conference procedure.

We should like your views on these suggestions, and if you should be able to make any others they would be welcome. We ourselves have quite an open mind, and are merely exploring situation.

Our own feeling is that time has hardly come either to revive idea of Constitutional Conference or to call special meeting of Imperial

Conference to consider problems outlined above. But we should like these problems given preliminary examination in near future and it has occurred to us that possible method might be to have a meeting of, say, two representatives of each country concerned who have had experience of constitutional working, to consider these problems and present a report as basis for further discussion. How would you view this idea, and, if it commends itself, what time would be most convenient for a meeting? Possibly October might be suitable as this would permit of some of Dominion delegates to next Assembly of League of Nations being amongst representatives if this were desired.

Similar telegram sent to other Prime Ministers. RAMSAY MACDONALD. *Ends.*

—THOMAS.

. . . . .

*The Governor-General of the Commonwealth of Australia to the  
Secretary of State for the Colonies*

16th July. Following for Prime Minister from my Prime Minister:

*Begins:* Your telegram of 23rd June. My Government has noted the statements by the Secretary of State for the Colonies and yourself in Parliament affirming the principle of full consultation with the self-governing parts of the Empire on matters of foreign policy and general Imperial interest. We note also that you accept the principle of necessity for an effective arrangement for continuous consultation in important matters of common Imperial concern and for such concerted action as the several Governments may determine.

My Government has given a great deal of consideration to this most important question, and notes with pleasure your Government's acceptance of the basic principle.

It is, of course, obvious that in practice there are two main difficulties in establishment of an effective system of joint consultation and action, namely (a) the impossibility of full exchange of views when the Imperial Conference is not sitting, particularly in the sphere of foreign policy where immediate action is imperative, and (b) the possibility of conclusions of Imperial or Economic Conferences being reversed through change of government.

The problems which have to be considered appear to divide themselves into: (1) the manner in which an Imperial policy should be laid down in regard to matters of common Empire interest, such as foreign policy, defence, and inter-Empire trade. (2) How should consultations take place with regard to giving effect to such policy when determined upon and for its alteration where necessity arises? (3) What steps can be taken to ensure that any common policy arrived at will be given effect to irrespective of change of government in different parts of the Empire?

With regard to (1) it is now an established principle of Empire Government that Prime Minister Conferences shall take place at frequent intervals. At these Conferences a common Empire policy on questions of Imperial interest can be arrived at and submitted by the respective Prime Ministers to their individual Parliaments for their ratification and assent. The machinery for ensuring a common policy therefore already exists by holding of the Imperial Conferences, and no alteration of existing practice appears either necessary or desirable.

(2) It is unavoidable that questions of urgent foreign policy must be dealt with according to the circumstances in which they arise, and they are therefore in an entirely different category from other matters upon which a common policy may have been determined at an Imperial Conference. It appears to my Government therefore that no alteration in the underlying principle of consultation which at present exists is practicable, but considerable improvement could be effected in the operation of such machinery. These improvements should be on lines of (a) a closer liaison between the Foreign Office and Dominion Governments, which could be effected by the establishment by the Dominions of a Foreign Office Branch in their High Commissioners' Offices under the control of an officer of such standing and character as to enjoy the confidence of the Foreign Office; such a representative would be in a position to keep his Prime Minister informed in regard to current events and atmosphere in connexion with foreign policy, in addition to information which is conveyed by cable to the Prime Minister and by information at present sent from time to time by the Foreign Office. (b) Fuller and more regular advice in regard to all questions of foreign affairs, both by cable and mail, than is at present forwarded to the Prime Ministers of the self-governing Dominions. (c) Greater efforts to anticipate questions which are likely to arise and require urgent decision, with a view to ascertaining the views of the Dominions in advance in place of informing them of decisions after they have been arrived at and acted upon or when it is too late for any alternative action to be submitted.

With regard to questions other than foreign policy, my Government is of opinion that the establishment of a permanent Imperial Secretariat responsible to the Prime Ministers of all the self-governing parts of the Empire whose task would be to prepare for the Imperial Conferences, carry out all Secretariat work during the sittings of such Conferences, follow up all Resolutions and decisions arrived at, and keep the Dominions constantly informed of developments between the Conferences, would go a long way towards solving the problem of effective and continuous consultation. This Secretariat would also embrace existing Imperial Committees such as the War Graves and Shipping, and the Economic Committee when established. It would not merely be a connecting link between the individual Dominion

Governments and the British Government, but also between the Governments of the different Dominions. At the present time the Secretariat for Imperial Conferences is provided by the British Government, together with representatives of the Dominions concerned, but immediately the Conference is over the Secretariat is broken up, and no effective machinery exists for keeping the Dominions continuously informed as to developments or alterations necessitated by changed circumstances. In the opinion of my Government a great improvement would be effected by the establishment of a permanent Imperial Secretariat.

With regard to ensuring that any common policy arrived at at Imperial Conferences will be given effect to irrespective of change of Government, this appears to my Government to be quite impossible of definite solution. It appears to us, however, that the task of holding this great Empire together, which is so dependent on giving effect to a common policy arrived at at Imperial Conferences, should be raised above the ordinary level of domestic policy and not subordinated to local political issues. We are of opinion that the British Government should give greater consideration to the considered views of the Dominion Governments than in the past, otherwise all our efforts towards effective consultations and formulation of common policy will be futile.

Your suggestion that party issues might be avoided by inclusion in Imperial Conference delegations of representatives of all parliamentary parties is, in our opinion, not likely to achieve the result desired. As you state, it would tend to hamper that frank exchange of views and unrestricted intercommunication of confidential information on such matters as foreign policy and defence. Furthermore, it might easily lead to serious consequences on the return of the delegations to their respective countries. The leader of the Government and of the Opposition would respectively feel compelled to relate his version of the Conference and his reasons for agreement or disagreement with conclusions arrived at.

Secrecy in these circumstances would be impossible. Further, an atmosphere of political controversy would inevitably obtrude into the Conference itself, and present free and unfettered discussions between men who at the time are actually shouldering responsibilities of the Government in their respective countries would disappear. My Government does not believe this suggestion would effect the result desired, but, on the contrary, believes that it would tend to increase further the difficulties which are at present experienced.

Your second suggestion that each Government shall obtain from its own Parliament beforehand a general approval within sufficiently wide limits of the attitude to be taken up by its representative is one which the Commonwealth Government has almost invariably followed. As, however, the conclusions of such Conferences must

always be ratified by the respective Parliaments, my Government does not consider this suggestion material aid in finding a solution.

We appreciate your attempt to explore the situation and agree as to the importance of finding a solution. We feel, however, that solution will be gradually evolved and consider that our object is more likely to be defeated than attained by undue precipitance.

The existing arrangements for the formation of a common Imperial policy and for subsequent consultation form the basis of a system which in the future may well become effective.

In these circumstances we do not see that any advantage is to be gained by the appointment of representatives to consider this problem and present a report as a basis for further discussion. All points at present under discussion were present to the minds of the Prime Ministers at the Imperial Conference held last year, but it was unanimously felt that the best course to pursue was to allow the situation to solve itself by gradual evolution rather than by immediate definite action.

My Government therefore does not propose to send representatives to a conference to discuss these questions, but is prepared during the interval until the next Imperial Conference is held to explore further any suggestions that may be put forward, and also to offer for similar consideration by other governments concerned any improvements in the existing machinery which may occur to us. *Ends.*

—FORSTER.

*The Governor-General of Canada to the Secretary of State for the Colonies*

7th August. Following from Prime Minister for your Prime Minister :  
*Begins:* Re preliminary meeting inter-Imperial consultation, our Government has now considered proposals set out in your telegram of 23rd June. We agree as to the desirability of more definite understanding on matters therein referred to. Questions are not new and very marked progress has been made in their clarification and solution particularly in recent years. Whilst finality is not possible in constantly changing situation, doubtless further steps can be taken. Difficulty is inherent in existence of several self-governing communities scattered over the globe with, in large part, different neighbours and different problems, and is increased by absence of precedent for the experiment in co-operation which members of British community of nations are working out. We believe with good-will which has always prevailed, it can continue to be met.

As to first of specific proposals, we agree that it would be helpful to consider possibilities of further extension of principle embodied in Resolution on negotiation, &c., of treaties. Second proposal does not appear feasible. It is undoubtedly inconvenient to have reversal of policy but this liberty must be assured so long as separate Parliaments

exist and electors are to be free to have policy determined in accordance with their wishes. As a matter of fact even with change in Government there is very considerable measure of continuity of essential policy. Proposal to have all parties represented in the Imperial Conferences with a view to preventing policy agreed upon thereat being rejected by existing or future Parliaments would seem to imply setting up a new body supreme over the several Parliaments. We regard the Imperial Conference as Conference of Governments of which each is responsible to its own Parliament and ultimately to its own electorate and in no sense as Imperial Council determining the policy of the Empire as a whole. We would deem it most inadvisable to depart in any particular from this conception which is based on well established principles of Ministerial responsibility and the supremacy of Parliament. We consider that with respect to all Imperial Conference resolutions or proposals each Government must accept responsibility for its attitude and the Opposition or Oppositions be free to criticize; with Parliaments and if occasion arises peoples deciding the issues.

As to approval by Parliament in advance of the attitude to be taken by our representative we feel that this could be given only where Parliament had knowledge in advance of specific questions to be considered and in the light of the then existing circumstances. We agree that even in such cases adoption of this method might tend to diminish the flexibility of Conference procedure.

We share the feeling expressed in your message that the time has hardly come either to revive the idea of constitutional Conference or to call a special meeting of the Imperial Conference to consider these problems. We would be prepared, however, to take part in the manner suggested in meeting in the near future for preliminary examination of these problems and preparation of Report as basis for further discussions provided that other parts of the Empire agree and date convenient for all can be found. Early in October would appear to us to be the most convenient time for such meeting. *Ends.*

—BYNG.

I. THE APPOINTMENT OF A MINISTER FROM THE IRISH  
FREE STATE TO THE UNITED STATES, 1924

THE POSITION OF THE MINISTER FROM THE IRISH FREE STATE  
(*Parliamentary Papers (Great Britain)*, 1924, Cmd. 2202, p. 2)  
*Sir Esmé Howard to the Secretary of State of the United States*

British Embassy, Washington,

June 24, 1924.

Sir,

Under instructions from His Majesty's Principal Secretary of State for Foreign Affairs, I have the honour to inform you that His

Majesty's Government have come to the conclusion that it is desirable that the handling of matters at Washington exclusively relating to the Irish Free State should be confided to a Minister Plenipotentiary accredited to the United States Government. Such a Minister would be accredited by His Majesty the King to the President of the United States, and he would be furnished with credentials which would enable him to take charge of all affairs relating only to the Irish Free State. He would be the ordinary channel of communication with the United States Government on these matters.

Matters which are of Imperial concern or which affect other Dominions in the Commonwealth in common with the Irish Free State will continue to be handled as heretofore by this Embassy.

The arrangements proposed by His Majesty's Government would not denote any departure from the principle of the diplomatic unity of the Empire. The Irish Minister would be at all times in the closest touch with His Majesty's Ambassador, and any question which may arise as to whether a matter comes within the category of those to be handled by the Irish Minister or not would be settled by consultation between them. In matters falling within his sphere the Irish Minister would not be subject to the control of His Majesty's Ambassador, nor would His Majesty's Ambassador be responsible for the Irish Minister's actions.

In communicating to you these proposals, which His Majesty's Government trust will promote the maintenance and development of cordial relations between the British Empire and the United States, I have been instructed to express the hope that the United States Government will concur in the appointment of an Irish Free State Minister at Washington on the footing I have indicated above. As regards questions such as the precedence to be attributed to the Irish Minister or any other points which the United States Government may desire to raise in connexion with the appointment, His Majesty's Government will await the views of the United States Government.

I have, &c.

ESMÉ HOWARD.

J. THE REGISTRATION OF THE ANGLO-IRISH AGREEMENT  
WITH THE LEAGUE OF NATIONS, 1924

CORRESPONDENCE WITH THE SECRETARY-GENERAL OF THE LEAGUE

(*League of Nations (Treaty Series)*, 1924, vol. 27, pp. 449-50)

*Communication from the British Government*

Foreign Office, S.W. 1

November 27, 1924

Sir,

I am directed by Mr. Secretary Chamberlain to acknowledge the receipt of your communication of the 11th July last, to the effect that at the request of the representative of the Irish Free State at Geneva



'the Treaty concluded between Great Britain and Ireland on the 6th December 1921' was registered on the 11th July with the Secretariat of the League of Nations.

2. Since the Covenant of the League of Nations came into force, His Majesty's Government has consistently taken the view that neither it nor any conventions concluded under the auspices of the League are intended to govern relations *inter se* of various parts of the British Commonwealth. His Majesty's Government considers, therefore, that the terms of Article 18 of the Covenant are not applicable to the Articles of Agreement of December 6, 1921.

I am, Sir, Your obedient Servant,  
Alexander Cadogan.

The Secretary-General,  
League of Nations,  
Geneva.

*Communication from the Government of the Irish Free State*

Minister for External Affairs  
Sir,

Saorstát Éireann,  
18th December, 1924

I am directed by the Minister for External Affairs to acknowledge the receipt of your communication of the 8th instant. . . .

The Government of the Irish Free State cannot see that any useful purpose would be served by the initiation of a controversy as to the intentions of any individual signatory to the Covenant. The obligations contained in Article 18 are, in their opinion, imposed in the most specific terms on every member of the League and they are unable to accept the contention that the clear and unequivocal language of that Article is susceptible of any interpretation compatible with the limitation which the British Government now seek to read into it.

They accordingly dissent from the view expressed by the British Government that the terms of Article 18 are not applicable to the Treaty of 6th December 1921.

I have the honour to be,  
Sir, Your obedient Servant,  
J. P. Walshe,  
Secretary.

The Honourable  
Sir Eric Drummond, K.C.M.G.,  
Secretary-General,  
League of Nations, Geneva.

K. THE TREATY OF LOCARNO, 1925

I. DEBATE IN THE BRITISH HOUSE OF COMMONS

(*British House of Commons Debates*, November 18, 1925,  
pp. 454-7, 519-22)

Right Hon. DAVID LLOYD GEORGE: . . . The failure to consult the Dominions, to bring them into consultation, is a serious error which

may have grave consequences. There was a great change in the whole treatment of foreign politics by the Empire as the result of the War. . . . We definitely agreed that upon all questions of foreign policy—certainly those involving any new departure, not interpretations left to the Foreign Office, but over great Treaties—the Dominions should be fully consulted.

The Foreign Secretary has said very fairly, 'You cannot conduct consultations by cable.' But my right hon. Friend the leader of the Labour party has pointed out that there has been plenty of time for a fuller consultation than that. This offer came from Germany in February. There have been seven or eight months during which the Dominions could have been consulted. Every great Treaty up to Lausanne, as my right hon. Friend pointed out, was negotiated upon the basis of full consultation with the British Empire delegation. There was a British delegation in Paris, and there was not a clause in the Treaty of Versailles about which they were not consulted—not one. The same thing applies to all the other negotiations. They were present at Genoa. The first departure, and it is a very, very grave departure, from that policy was over the Treaty of Lausanne. I am very sorry that the right hon. Gentleman the Secretary of State for Foreign Affairs, with his great traditions in this matter, should have followed that most perilous precedent. . . .

It has been a break in our diplomatic unity. I thought one of the achievements of the War was that it had unified the Empire, had brought the Dominions into the orbit, as it were, of our foreign policy, and that we should have the advantage of knowing that whatever happened to us in the future would be as a result of a policy they were just as much responsible for as we were. I am not going to predict that if we were in trouble the Dominions would desert us. I do not believe it. But they might not come in with the same alacrity if it was over something they had not been consulted about, and, as my right hon. Friend knows very well, they might not come in with the same unanimity and unity, and that makes all the difference. I deeply regret that this consultation was not possible, especially as it was in the negotiation of a Treaty which I heartily approve of, which I rejoice in. It is a great misfortune that there should be just this one thing that has marred the triumph, and has introduced a new element of peril to the Empire at a time when we are undertaking liabilities and responsibilities which are full of peril themselves. . . .

Right Hon. AUSTEN CHAMBERLAIN (Secretary of State for Foreign Affairs): . . . I deeply regret that the circumstances of the different Governments of the Empire made it impossible for His Majesty's present advisers, before they entered into any negotiations with foreign countries, to have a conference with the Dominion Governments. I cannot say how much importance I attached to the hope of such a conference in advance, or how much I feel I should have been aided

throughout my negotiations if it had been possible to enter into personal conference with the representatives of the Dominions before I had to declare a policy on behalf of the Government. It was not for want of goodwill on our part. It was not for want of desire on our part to act, not merely in the full knowledge of the Dominion Governments, but in complete accordance with them, that such conference did not take place. . . .

We did seek a conference with the Dominions and India before we announced our policy with respect to the Protocol, and that not merely for the purpose of deciding what was to be done with the Protocol, about which all the Governments of the Empire were in agreement, but because we simply could not turn down the Protocol and leave nothing in its place, and because there must be an alternative policy which we must adopt. I do not for one moment criticize the Dominion Governments which were unable at a moment's notice to come and meet us in conference. But the affairs of the world do not stand still. The world stood in peril. When we reached office, we were faced with a situation which had faced our predecessors and of which they were well aware—a situation in which, if I may so express myself, all the feelings of war persisted after the signing of peace, a situation in which Europe was arrayed in hostile camps, which were becoming not less, but more hostile as time passed, and a situation the mere continuance of which was perilous not only to European peace but to the safety of this country and the British Empire. We were bound to have a conference. We were bound to take some action.

I could not go, as the representative of His Majesty's Government, to meeting after meeting of the League of Nations, to conference after conference with the representatives of foreign countries, and say, 'Great Britain is without a policy. We have not yet been able to meet all the Governments of the Empire, and we can do nothing.' That might be possible for an Empire wholly removed from Europe, which existed in a different hemisphere. It was not possible for an Empire the heart of which lies in Europe and next door to the Continent of Europe, and where every peril to the peace of Europe jeopardized the peace of this country. No man—I think I can appeal to the House to allow me that personal allusion—no man more than my father's son, on taking up the duties of a Foreign Secretary, desired to pursue a policy not merely in close consultation with, but in full harmony and accord and agreement at every stage with the Dominion Governments. Such is my desire to-day and such will always be my desire. But the circumstances of this particular case were circumstances which did not allow us to remain without a policy, lest Europe should be so embedded in the quarrels of the past that the British Empire should inevitably be involved in some new struggle to which we were going against the will of every one because the

Governments or nations appeared unable to get themselves out of the rut in which they were engaged.

I would have welcomed, and no man more, the assistance at every stage of these negotiations, before Locarno and at Locarno, of authorized representatives of the Dominion Governments. That was not possible in the circumstances of the case. All that His Majesty's Government could do was to follow the precedent set at the Peace negotiations, when their representatives were present, and to embody in this Treaty the Clause which was embodied in the Anglo-French Treaty of Guarantee, reserving to the Dominion Governments the right to adhere or not to adhere. That we have done. They cannot be committed to obligations without their assent. But I earnestly hope that, not only may this negotiation not be an obstacle to future co-operation, but that it may excite in all of us, in every Government of the Empire, a keener desire to find machinery by which our foreign policy can become in every act and at every hour the foreign policy of the Empire and not the foreign policy of this country only.

. . . . .

## 2. ATTITUDE OF THE CANADIAN GOVERNMENT

(*Canadian House of Commons Debates*, March 30, 1927, p. 1707)

HON. ERNEST LAPOINTE (Minister of Justice): . . . We have taken the position that we are not bound by the Locarno treaty, which was initiated and entered into by the British Government without the co-operation of Canada. I have no criticism to offer in that respect; it was largely a matter of concern to the Government of Great Britain, and was a European matter. As I have seen it expressed in the newspapers of this country, we may be bound to some extent if there is a war between the nations which are signatories to the treaty; we may have some obligation on account of our membership in the British Commonwealth of Nations and as members of the League of Nations, but our obligations as British subjects and as members of the League of Nations are quite different from the obligations which we would assume if we were to guarantee the boundaries between France and Germany, thus assuming obligations with regard to foreign powers at a distance of over 3,000 miles from the limits of Canada. I think we have exactly the same reason for not entering into that treaty as Great Britain had when she refused to give the same guarantee to the eastern boundary of Germany as she gave to the western boundary. The eastern boundaries of Germany touch on Poland, and in that connexion the British Government refused to sign any guarantee. That guarantee was signed by France, but the British Government refused to be involved in the question of the boundaries on the eastern side of Germany because they were too remote, and the same reason would apply with us so far as the western

boundary is concerned. So I may say to the hon. member for Labelle that Canada has not ratified the pact of Locarno and is not a party to it. . . .

### 3. ATTITUDE OF THE IMPERIAL CONFERENCE, 1926

(Cf. *infra*, Section V, A. 3, p. 345)

#### 4. 'THE BRITISH EMPIRE AND THE LOCARNO AGREEMENT'

(*The Round Table* (Macmillan, London), December 1925,  
pp. 15-22)

. . . There is one other aspect of the Pact which requires the most careful consideration. Article 9 reads as follows: 'The present Treaty shall impose no obligation upon any of the British Dominions, or upon India, unless the Government of such Dominion, or of India, signifies its acceptance thereof.' Under present conditions possibly no other course was open to Mr. Chamberlain. All experience since the Peace Conference of Paris has gone to show how difficult it is, except on a few occasions, such as the Assemblies of the League of Nations, the Washington Conference, and to a less degree the London Conference about Reparations last year, to collect sufficiently authoritative representatives of the Dominions to create a true British delegation to deal with the more serious international problems which continually come to the British Foreign Office for settlement.

It is pretty evident that Mr. Chamberlain, having kept the Dominions and India fully informed of the negotiations throughout their earlier stages, felt that if they were to be carried through to a successful conclusion it was not practical politics either to collect a really representative delegation to take with him, or to expect it to come to decisions binding the six Governments of the Empire with the speed which was essential if agreement was to be reached. For it was of the very essence of the Locarno Conference that it should be small, and not obstructed by numbers and formality, and that it should conclude its labours in not much more than a week. So he went ahead, did the best he could, and has submitted the result to the Dominions to ratify or ignore as they please.

In the circumstances it is difficult to prove that Mr. Chamberlain could have done anything else. None the less, the result is a tremendous blow to that theory of the diplomatic unity of the British Commonwealth of Nations, which has been the very basis of Imperial policy since the first meeting of the Imperial War Cabinet in 1917. The theory then and since has been that, just because the Empire acted as a unit for purposes of defence, so it was necessary for it to present a common diplomatic front to the rest of the world, at any rate on all matters of first-rate importance. It was agreed, therefore, that the policy it was to pursue was to be one, and was to be determined as the outcome of consultation between the six Governments

of which it was composed. To use a somewhat undiplomatic phrase, the Empire in foreign policy had 'to agree or go under'. That theory was given some measure of elaboration at the last Imperial Conference, which passed a resolution to the effect that each nation in the Empire could negotiate treaties with foreign Governments on matters affecting itself alone, but that where the subject concerned, or might involve, other parts of the Empire, it must consult with them before entering into any kind of binding engagement. This theory of the diplomatic unity of the Empire was the cause of the controversies about Chanak, about the ratification of the Lausanne Treaty, and about the method of negotiating the London agreement on reparations in July 1924, and in all cases it ultimately prevailed. Further, for the last six years, it has been a primary axiom of British external policy that the British Foreign Office could not enter into engagements of first-class importance, especially engagements involving the risk of war, without the consent of the other partners in the Empire, a consent which normally implied active participation by their own representatives in the actual negotiation of treaties.

The Locarno treaties are an abrupt departure from this tradition in favour of the system contemplated in the draft Anglo-American Treaty of Guarantee to France of 1919, but never actually brought into force, because the said treaty was never ratified. That system is that Great Britain, not in all matters (for on subjects which obviously directly affected the Dominions, such as those dealt with at the Washington Naval and Pacific Conference or the Assembly of the League, the negotiations would presumably still be conducted by a full British Empire delegation on the old lines) but on matters affecting Europe, even of the first importance, will proceed, no doubt after giving all information possible by cable and dispatch but without a British Empire delegation, to negotiate treaties which are to be binding on herself but which will impose no obligations on the Dominions unless they afterwards ratify them themselves.

What does this mean? It means many queer things. It certainly leaves any Dominions which do not 'contract in' morally much freer to decide whether they will take any active part in helping to enforce any such treaty when the time for enforcement arrives. On the other hand, it does not alter in the least the fact, under international law, that they will legally be in a state of belligerency whenever the King, acting on the advice of his British Ministers, embarks upon a war as a result of obligations assumed under such a treaty. It does not, therefore, solve the fundamental Imperial problem; it only postpones the question of whether the Dominions should assume any actual obligations under a treaty so negotiated, or should secede from the Empire rather than become belligerents, until the crisis of fulfilment actually arises.

It is difficult to see, too, how the new system can fail to increase

the divergence between the foreign policy of Great Britain and the Dominions. In the great field of Europe, at any rate, the attempt to secure unity seems to have now been abandoned as hopeless. Yet, let us consider where this leads to. Great Britain will inevitably and increasingly tend to pursue a purely British policy. We venture to believe that if the Dominions had been represented at Locarno, Mr. Chamberlain would have been forced to realize, far more clearly than perhaps he has done, the dangers from the Imperial point of view of the Rhineland commitment. Similarly the Dominions will inevitably and increasingly tend to look at international problems from their own purely national standpoint and, in so far as they deal directly with the foreign Governments, to forget or ignore wider Imperial considerations. Where is that process going to end? As a matter of fact both the Dominions and Great Britain rely upon the support of the rest of the Empire if they get into difficulties. Yet the new system will tend to make that support increasingly difficult to obtain. The Dominions will become less and less ready to support Great Britain in fulfilling obligations which she has entered into without their prior consent. Great Britain will become increasingly unwilling to support the Dominions in external policies which they may enter into without her prior consent. And this tendency, once begun, may spread more rapidly in Great Britain than overseas, for providing, as she does under existing conditions, the major share both of the army and the navy, Great Britain would in fact have to carry the major share of the consequences of any international hostilities which a mistaken diplomacy in any part of the Empire might produce. . . .

The point is extremely well put by General Smuts in a speech made in Pretoria on November 11 and quoted in *The Times* (November 12, 1925).

He regretted that the Empire had not acted with a united front in negotiating and signing the Pact, and doubted whether all the Dominions were likely to adhere to the Pact *ex post facto*. This case was going to be a precedent for the future. The tendency would be for the British Empire delegation to disappear from the field of diplomacy. More and more the foreign policy of the British Government would become simply that of Great Britain. The day might come when the Dominions might feel they had little in common with such a policy, and would begin their own foreign policies in their own interests. There were natural and inevitable centrifugal tendencies at work in the Empire, and he much feared that Locarno had given some impetus to them. A fear was sometimes expressed, which he did not share, that the League of Nations must inevitably weaken the links of Empire. Incidents like Locarno were far more likely than the League to sow seeds of dissension and division. The Empire was a priceless blessing, and was to-day, with American abstention from the League, the main force supporting the advance of great human causes and ideals in the world. The maintenance of solidarity and a united front were therefore essential.

There is one more consideration. The argument for the diplomatic unity of the Empire is twofold. On the one hand, it adds to the security of every part that they should deal with problems of defence together. On the other hand, the influence of 'British' diplomacy for peace and order in the world will be much greater if it has the full weight of the Empire behind it than if it has that of Great Britain alone, or still more if the different nations within it pursue opposed or divergent policies. The new system inaugurated at Locarno strikes, therefore, at the very root of the efficacy of the British Empire, whether it works through the Council of the League of Nations or through ordinary diplomacy in promoting world peace. The most popular argument overseas for non-cooperation in diplomacy is that it may enable particular parts of the Empire to keep out of war and foreign entanglements. That argument is the result of a delusion. Every war of importance must now be a matter of world concern. It dislocates trade and commerce. It tends constantly to spread. If it vitally affects any part of the Empire, other parts will be able to avoid active participation only at the price of fighting a civil war at home. The common-sense attitude is for the nations of the Empire to co-operate actively in formulating and pursuing an agreed policy, a policy which is all the more likely to be sound and fruitful in preserving the main common interest—the peace of the world—because it is the product of intelligent consultation between peoples situated in all parts of the world and not of a single self-centred national outlook.

It may be replied that Article 9 of the Locarno Pact is a *fait accompli* and that the only thing to do is to face facts and go on along its lines. We agree that no more advantage is to be gained in refusing the Pact on the ground that it creates new Imperial difficulties, than there is for rejecting it on the ground that it creates new problems for Great Britain in Europe. The answer in both cases is the same, to carry through the treaties, if they are ratified by the other signatories, for the sake of their larger effects in removing the more urgent and serious causes of war, but to set to work immediately to find the way of solving the new problems to which they give rise.

None the less it is essential that the nations of the Empire which have been drifting since 1920, should sit down and face the situation by which they are confronted by Article 9. What is needed to-day is not the constitutional conference contemplated by the Imperial Conference Resolution of 1917, but a less ambitious conference to determine how the vast new problems confronting the Commonwealth, arising out of the Locarno treaties and also in Russia, in the Far East, along the Mediterranean, are to be dealt with in future. Are they going to endeavour to maintain the diplomatic unity of the Empire, and if so how are they going to do it, or are they going to allow its constituent parts to develop into completely separate nations, each



with a policy and diplomacy of its own. Such a conference would also be useful in clearing up another important point. The Locarno pact is inseparably mixed up with the working of the League of Nations. The Dominions are members of the League. They are, therefore, under obligation to take certain action in certain eventualities. What exactly are those obligations? It is essential that public opinion should know. Further, the attitude of the Assembly towards the whole question of these arbitration treaties, still more the attitude of Great Britain, which speaks for the 'British Empire' on the Council of the League, can be profoundly influenced by the views of the Dominions. How are they going to exercise that influence so as to promote peace? The problem raised by the Locarno treaties for the nations of the Empire, indeed, is far more complicated than the narrow one of whether the Dominions should formally ratify them or not. On the last point we can clearly express no opinion, for it is within the sole competence of each Parliament to decide for itself. . . .

## SECTION V

### THE PERIOD OF EQUAL STATUS, 1926-36

#### A. THE IMPERIAL CONFERENCE, 1926

##### 1. THE CONSTITUTIONAL PROBLEM

(*The Round Table* (Macmillan, London), September 1926,  
pp. 674-80)

THE practical problem of the Empire to-day is how to reconcile these two fundamentals, unity and responsibility, in the conduct of foreign affairs.

The difficulty of the present-day situation is largely due to the fact that the assumption which has governed the conduct of foreign affairs since the appearance of the Imperial War Cabinet in 1917—namely, that it was possible for the six self-governing nations of the Empire to consult together sufficiently continuously and sufficiently effectively to formulate a common policy for dealing with foreign affairs, and to make themselves jointly responsible for such a common policy—has broken down. The system worked triumphantly at the Washington Conference on the Pacific and naval disarmament. It began to weaken at Chanak. It was badly strained at Lausanne. It was only maintained by a fiction during the London Conference on Reparations. It disappeared altogether at Locarno. The theory of joint responsibility for a joint diplomacy having thus gradually failed, no clear-cut and easily understandable alternative has been accepted and put in its place. The malaise of the last year or so in inter-Imperial relations, the deadlock in devising any intelligible or effective system of inter-Imperial communications, is due not to any real difference about the foreign policy to be pursued, but mainly to the fact that nobody quite knows where they are. It is one of the first tasks of the Imperial Conference to remove the uncertainty and define a new basis for the conduct of the foreign policy of the Empire which will conform to the facts and make harmonious and confident relations between its parts once more possible.

What is the root of our present-day difficulty? It is well defined . . . as 'the dislike of definite committal'. That, in our judgement, represents the exact position. It is a perfectly natural dislike. Canada, which is menaced by no external militarist danger and whose chief foreign interest is the maintenance of world peace, and South Africa, which is also free from direct external menace and is preoccupied with the colour problems of the centre and south of the African continent, instinctively and naturally dislike any system of inter-Imperial relations which seems to commit them to entanglement in

what Sir Wilfrid Laurier used to call 'the vortex of European militarism', even though they generally approve of the efforts of Great Britain to maintain the peace in Europe. They are interested in the League of Nations, and they are concerned with the independence and security of all parts of the Commonwealth, but their first instinct is to avoid definite commitment of any kind in Europe. The attitude of Australia and New Zealand in foreign policy is somewhat different. They are much more obviously dependent for their security on the British navy. They are, therefore, much more ready to back British policy in Europe for the reason that they want the backing of the British navy for their policy of a white Australasia in the Pacific. The attitude of Ireland is still obscure. Geographically part of Europe, her external policy is still largely dominated by the ultra-nationalist philosophy of the Sinn Féin era. Looked at as a group, all the Dominions want to escape from the burden of constant international responsibility, in order that they may concentrate on the development of their own empty spaces. Great Britain, already a fully peopled land, and endowed with immense possessions which she has to manage and protect, has no similar feeling. The predominant feeling overseas is not that any unit wants to break up the Commonwealth. It is that they do not wish to be involved in responsibility for the day-to-day conduct of international affairs, or to be actively involved in them, except when world problems of the first importance are to the front, or when the vital interests of the Empire or one of its nations are in jeopardy.

This limited commitment, however, is not so easy to secure as might at first sight appear, for the British Commonwealth is a world-wide structure and cannot help being affected by events in every part of the globe. World peace, too, cannot be achieved merely by keeping out of entanglements, but only by dealing with world problems effectively while they are still malleable and soluble. Moreover, under international law and in the view of all foreign nations, the Commonwealth is a single international entity. It is presided over by a single sovereign, and it goes to war and makes peace as a unit, even though, as at Versailles, for internal reasons, it requires to be represented at Conferences by an embarrassingly large number of plenipotentiaries. Yet that means that when Great Britain, in pursuance of her policy or her treaty obligations in Europe or elsewhere, goes to war, her partner nations are *ipso facto* placed in a condition of belligerency also. They may take no active part in the war, but under international law they have the status of belligerents with all the liabilities and obligations that that status implies. It is equally true that if the King on the advice of one of his Dominion Governments went to war, Great Britain and the rest of the Empire would also be at war. Yet, if the foreign policy of the Empire is no longer to be regarded as one to which its six nations have jointly agreed and for which they are

jointly responsible, this means that Great Britain—or any Dominion—in pursuit of her own external policy can commit her partners to belligerency without their consent—a state of affairs inconsistent with the doctrine of responsibility.

At one time it was suggested that the dilemma might be solved by arranging for a formal notification to be made to all foreign nations that a declaration of war by Great Britain did not commit the Dominions to belligerency, and that no self-governing portion of the Empire would be in a state of war except as a result of a declaration to that effect by its own Government. On examination, however, this solution proved to be no solution, because it was seen to involve the dissolution of the Commonwealth itself. In order to make it effective it would be necessary in the event of war for any part of the Empire which wished to escape belligerency to make a declaration of neutrality. This would mean that it would have to intern any British soldiers or officials who happened to be within its borders, it would have to refuse its harbours and ports to British vessels of war, it would have to give trade facilities to the enemy and allow it to use its territory for legitimate purposes of espionage, propaganda, and so on. Inasmuch as it is obviously impossible for the Crown to be both at war and at peace or neutral at the same time, a declaration of neutrality would in fact be a declaration of secession, with all the consequences, constitutional and otherwise, that that would entail. British citizenship, with all that it means for travel and business in all parts of the world, would disappear. It is obvious that under existing circumstances there is no way out along this line, for the sentiment of Imperial unity is strong enough to forbid it.

What, then, is to be done? There would seem, for the present, to be only one practical course, and that is to face the facts as disclosed above and to act upon the practical conclusions which derive from those facts. The solution thus arrived at may be illogical and anomalous, but that is no novelty in the British Commonwealth, nor has want of logic or theory destroyed its working utility in the past.

The central fact is that the theory of a single foreign policy for the Empire, jointly arrived at and jointly backed, has broken down because the external relations of the Empire and its member States are too diverse to be forced within so narrow a system, except when a single supreme issue, like that of the great war, absorbs the attention of every part. It seems obvious that a distinction must be drawn between external problems which are of local concern and external problems which are of Imperial concern. It is perfectly clear that Canada, Australia, South Africa, and New Zealand regard the problems of Europe—indeed of the outside world as a whole—as primarily Great Britain's concern. Most of the time these problems present no aspect which vitally affects the other nations of the Empire. But at times they may assume a form when they become of vital importance

to one or more of them. Australia and New Zealand, and to a less extent Canada, are actively interested in Pacific questions. South Africa is actively interested in all that goes on in the neighbouring territories. The security of Australia, New Zealand, and South Africa depends upon the British navy. All parts are deeply concerned with freedom of communications by sea, for their trade depends upon it. All parts are concerned with war anywhere because war may always develop into world war. Whenever any of these issues come to the front, or when Anglo-American relations are involved, the Dominions will certainly demand an effective voice in the foreign policy of the Empire. But at other times they seem to regard the day-to-day dealing with the multifarious problems of Europe, Asia, the Near East, and South America as primarily Great Britain's business. They think that she has the experience to enable her to handle these problems. They know that she has the equipment for dealing with them. Their main desire seems to be that she should continue to conduct foreign policy on her own responsibility up to the time when some of the special interests set forth above become involved, when they would require that joint consultation and joint action should follow.

On the other hand, it is no less clear that the Dominions will increasingly demand for themselves an equivalent liberty of action in those regions of international politics in which they are specially concerned but the rest of the Empire is not. They increasingly resent the interference of the British Foreign Office in such matters, and are increasingly insistent on conducting their own diplomatic negotiations. Canada already deals with Washington direct, as does South Africa with Portugal.

It seems to us that this affords a practicable basis for the conduct of the foreign relations of the Empire under present conditions. It was described in the last issue of *The Round Table* as follows:

The reasonable basis of association is surely that the nations of the Empire should recognize that they are equally concerned with world problems, with problems which may end in general war, and with problems which concern the vital interests of any member of the Commonwealth or the Commonwealth as a whole. With such problems they ought to deal collectively and with joint responsibility. Local international problems might be dealt with by each member nation on its own, informing its fellows of what is going on, but not expecting them to share responsibility until they are called in to share in the direction of policy also.

Great Britain in particular should conduct the complicated diplomacy, in which she is necessarily involved by reason of her propinquity to Europe and her far-flung possessions in all parts of the world, on her own responsibility, informing her associate nations of all that is going on, but not expecting them to accept or countersign her actions until their interests are directly concerned.

The foregoing basis accords very closely with the developments of the past few years. The greater number of the common international interests of the British Commonwealth are also the concern of the League of Nations, of which each major part of the Empire is a member, and in whose deliberations they already tend to act as a unit. The problems of the navy and of the Pacific were dealt with by a fully fledged British Empire Delegation at Washington. The problems of Europe and China have been increasingly dealt with by Great Britain alone. Canada has taken the management of her North American interests into her own hands.

This system, too, not only accords with the facts of the present-day world and reconciles the unity of the Commonwealth with the responsibility of the nations within it as completely as is practicable, it accords almost exactly with the resolution of the 1923 Imperial Conference about the treaty-making power.

## 2. OPENING SPEECH OF THE PRIME MINISTER OF SOUTH AFRICA

(*Parliamentary Papers (Great Britain)*, 1927, Cmd. 2769, pp. 24-5)

GENERAL HERTZOG: I take it that one of the objects of our gathering together here to-day and for the following weeks is to ensure the usefulness and permanency of our relations as an Empire by advancing its efficiency as an instrument of good for each of its associated members as well as for the world at large. In the attempt to attain that object I wish to assure you, Sir, of the hearty support and co-operation of myself and my colleague on behalf of the Union of South Africa. We are prepared to co-operate to the fullest extent in laying as solidly as possible the foundations of our Commonwealth of Nations so as to make it as durable as it can be, and here I wish to say a few words as to South Africa's attitude in regard to the Empire or British Community of Nations. It has our hearty support, and will ever have our hearty support, irrespective of parties and races, as long as it is, and shows the character of, a Commonwealth of free and independent nations, each free and striving to attain what is best for itself, yet in such a manner and in such a spirit as will conduce wherever and as much as possible to the well-being of all. If I may state in a few words the principle which should guide us in matters of general Imperial interest, I would say: In principle, unrestrained freedom of action to each individual member of the Commonwealth; in practice, consultation with a view to co-operative action wherever possible. It is clear to me that in order to attain the highest degree of permanency and usefulness for our Commonwealth we shall have to be frank with one another, but above all we shall have to be sincere, imbued with the spirit of goodwill and a desire to be of real service both to our country and to one another. It will be in that spirit of frankness and sincerity, I hope, that I and my

colleague will assist at this Conference. The economic and other practical questions will receive our full and earnest consideration with a desire to co-operate as much as our peculiar circumstances and requirements will permit. If, however, this Conference is to attain success at all commensurate with the expectations entertained, it will, Sir, as far as South Africa is concerned, have to do more than simply devote its energies to economic and other practical problems of the day. These are, no doubt, of very great importance, it may be of vital interest, but we may not forget that they are of vital interest mainly, if not solely, because the Empire with which they are concerned is assumed by us to constitute a relationship that will last. It is therefore of paramount importance that we shall make sure that the foundations of the Commonwealth are such as to stand the test of time. I think, Sir, it will be generally admitted that the cornerstone of the Empire is the will, the goodwill, of those who compose it. Without that will the Empire must collapse. If, therefore, the Empire is to be maintained, if it is to flourish, and fulfil that great task which we all hope it will achieve in the history of the world, we must see that the will to live in the Empire, as a Commonwealth of free nations, will in future, as it is to-day, be present and active with every one of its constituent elements.

Whether at present all the conditions are there to ensure the permanency of that will, and therefore of the Empire, is a question which I think we should inquire into at this Conference. Speaking merely for South Africa, I think they are not. South Africa is anxious to possess that will equally with every other member of the Commonwealth, but that will can be assured for the future only if she can be made to feel implicit faith in her full and free nationhood upon the basis of equality with every other member of the Commonwealth. That implicit faith she does not possess to-day, but she will possess it the moment her independent national status has ceased to be a matter in dispute and has become internationally recognized. I hope, therefore, that this question of the status of the Dominions, which concerns their own communities no less than the world at large, will receive due consideration by this Conference and will be agreed upon in a manner that will remove all fear and doubt for the future.

### 3. REPORT OF THE IMPERIAL CONFERENCE, 1926

(Summary of Proceedings, *Parliamentary Papers (Great Britain)*  
1926, Cmd. 2768, pp. 12-36)

#### VI. Inter-Imperial Relations

All the questions on the Agenda affecting Inter-Imperial Relations were referred by the Conference to a Committee of Prime Ministers and Heads of Delegations, of which Lord Balfour was asked to be Chairman. The members of the Committee included the Prime

Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, the Vice-President of the Executive Council of the Irish Free State, the Secretary of State for India, as head of the Indian Delegation, the Secretary of State for Foreign Affairs, and the Secretary of State for Dominion Affairs. Other Ministers and members of the Conference attended particular meetings.

## I. Introduction

We were appointed at the meeting of the Imperial Conference on the 25th October, 1926, to investigate all the questions on the Agenda affecting Inter-Imperial Relations. Our discussions on these questions have been long and intricate. We found, on examination, that they involved consideration of fundamental principles affecting the relations of the various parts of the British Empire *inter se*, as well as the relations of each part to foreign countries. For such examination the time at our disposal has been all too short. Yet we hope that we may have laid a foundation on which subsequent Conferences may build.

## II. Status of Great Britain and the Dominions

The Committee are of opinion that nothing would be gained by attempting to lay down a Constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried.

There is, however, one most important element in it which, from a strictly constitutional point of view, has now, as regards all vital matters, reached its full development—we refer to the group of self-governing communities composed of Great Britain and the Dominions. Their position and mutual relation may be readily defined. *They are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.*

A foreigner endeavouring to understand the true character of the British Empire by the aid of this formula alone would be tempted to think that it was devised rather to make mutual interference impossible than to make mutual co-operation easy.

Such a criticism, however, completely ignores the historic situation. The rapid evolution of the Oversea Dominions during the last fifty years has involved many complicated adjustments of old political machinery to changing conditions. The tendency towards equality of



status was both right and inevitable. Geographical and other conditions made this impossible of attainment by the way of federation. The only alternative was by the way of autonomy; and along this road it has been steadily sought. Every self-governing member of the Empire is now the master of its destiny. In fact, if not always in form, it is subject to no compulsion whatever.

But no account, however accurate, of the negative relations in which Great Britain and the Dominions stand to each other can do more than express a portion of the truth. The British Empire is not founded upon negations. It depends essentially, if not formally, on positive ideals. Free institutions are its life-blood. Free co-operation is its instrument. Peace, security, and progress are among its objects. Aspects of all these great themes have been discussed at the present Conference; excellent results have been thereby obtained. And though every Dominion is now, and must always remain, the sole judge of the nature and extent of its co-operation, no common cause will, in our opinion, be thereby imperilled.

Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle governing our Inter-Imperial Relations. But the principles of equality and similarity, appropriate to *status*, do not universally extend to function. Here we require something more than immutable dogmas. For example, to deal with questions of diplomacy and questions of defence, we require also flexible machinery—machinery which can, from time to time, be adapted to the changing circumstances of the world. This subject also has occupied our attention. The rest of this report will show how we have endeavoured not only to state political theory, but to apply it to our common needs.

### III. Special Position of India

It will be noted that in the previous paragraphs we have made no mention of India. Our reason for limiting their scope to Great Britain and the Dominions is that the position of India in the Empire is already defined by the Government of India Act, 1919. We would, nevertheless, recall that by Resolution IX of the Imperial War Conference, 1917, due recognition was given to the important position held by India in the British Commonwealth. Where, in this Report, we have had occasion to consider the position of India, we have made particular reference to it.

### IV. Relations between the Various Parts of the British Empire

Existing administrative, legislative, and judicial forms are admittedly not wholly in accord with the position as described in Section II of this Report. This is inevitable, since most of these forms date back to a time well antecedent to the present stage of constitutional development. Our first task then was to examine these forms with special

reference to any cases where the want of adaptation of practice to principle caused, or might be thought to cause, inconvenience in the conduct of Inter-Imperial Relations.

(a) *The Title of His Majesty the King*

The title of His Majesty the King is of special importance and concern to all parts of His Majesty's Dominions. Twice within the last fifty years has the Royal Title been altered to suit changed conditions and constitutional developments.

The present title, which is that proclaimed under the Royal Titles Act of 1901, is as follows:

George V, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

Some time before the Conference met, it had been recognized that this form of title hardly accorded with the altered state of affairs arising from the establishment of the Irish Free State as a Dominion. It had further been ascertained that it would be in accordance with His Majesty's wishes that any recommendation for change should be submitted to him as the result of discussion at the Conference.

We are unanimously of opinion that a slight change is desirable, and we recommend that, subject to His Majesty's approval, the necessary legislative action should be taken to secure that His Majesty's title should henceforward read:

George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

(b) *Position of Governors-General*

We proceeded to consider whether it was desirable formally to place on record a definition of the position held by the Governor-General<sup>1</sup> as His Majesty's representative in the Dominions. That position, though now generally well recognized, undoubtedly represents a development from an earlier stage when the Governor-General was appointed solely on the advice of His Majesty's Ministers in London and acted also as their representative.

In our opinion it is an essential consequence of the equality of status existing among the members of the British Commonwealth of Nations that the Governor-General of a Dominion is the representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government.

<sup>1</sup> The Governor of Newfoundland is in the same position as the Governor-General of a Dominion.

It seemed to us to follow that the practice whereby the Governor-General of a Dominion is the formal official channel of communication between His Majesty's Government in Great Britain and His Governments in the Dominions might be regarded as no longer wholly in accordance with the constitutional position of the Governor-General. It was thought that the recognized official channel of communication should be, in future, between Government and Government direct. The representatives of Great Britain readily recognized that the existing procedure might be open to criticism and accepted the proposed change in principle in relation to any of the Dominions which desired it. Details were left for settlement as soon as possible after the Conference had completed its work, but it was recognized by the Committee, as an essential feature of any change or development in the channels of communication, that a Governor-General should be supplied with copies of all documents of importance and in general should be kept as fully informed as is His Majesty the King in Great Britain of Cabinet business and public affairs.

### *(c) Operation of Dominion Legislation*

Our attention was also called to various points in connexion with the operation of Dominion legislation, which, it was suggested, required clarification.

The particular points involved were:

- (a) The present practice under which Acts of the Dominion Parliaments are sent each year to London, and it is intimated, through the Secretary of State for Dominion Affairs, that 'His Majesty will not be advised to exercise his powers of disallowance' with regard to them.
- (b) The reservation of Dominion legislation, in certain circumstances, for the signification of His Majesty's pleasure which is signified on advice tendered by His Majesty's Government in Great Britain.
- (c) The difference between the legislative competence of the Parliament at Westminster and of the Dominion Parliaments in that Acts passed by the latter operate, as a general rule, only within the territorial area of the Dominion concerned.
- (d) The operation of legislation passed by the Parliament at Westminster in relation to the Dominions. In this connexion special attention was called to such Statutes as the Colonial Laws Validity Act. It was suggested that in future uniformity of legislation as between Great Britain and the Dominions could best be secured by the enactment of reciprocal Statutes based upon consultation and agreement.

We gave these matters the best consideration possible in the limited time at our disposal, but came to the conclusion that the issues involved were so complex that there would be grave danger in attempt-

ing any immediate pronouncement other than a statement of certain principles which, in our opinion, underlie the whole question of the operation of Dominion legislation. We felt that, for the rest, it would be necessary to obtain expert guidance as a preliminary to further consideration by His Majesty's Governments in Great Britain and the Dominions.

On the questions raised with regard to disallowance and reservation of Dominion legislation, it was explained by the Irish Free State representatives that they desired to elucidate the constitutional practice in relation to Canada, since it is provided by Article 2 of the Articles of Agreement for a Treaty of 1921 that 'the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada'.

On this point we propose that it should be placed on record that, apart from provisions embodied in constitutions or in specific statutes expressly providing for reservation, it is recognized that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs. Consequently, it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in Great Britain in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

The appropriate procedure with regard to projected legislation in one of the self-governing parts of the Empire which may affect the interests of other self-governing parts is previous consultation between His Majesty's Ministers in the several parts concerned.

On the question raised with regard to the legislative competence of members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned.

As already indicated, however, we are of opinion that there are points arising out of these considerations, and in the application of these general principles, which will require detailed examination, and we accordingly recommend that steps should be taken by Great Britain and the Dominions to set up a Committee with terms of reference on the following lines:

To inquire into, report upon, and make recommendations concerning—

- (i) Existing statutory provisions requiring reservation of Dominion legislation for the assent of His Majesty or authorizing the disallowance of such legislation.
- (ii) (a) The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation.  
(b) The practicability and most convenient method of giving effect

to the principle that each Dominion Parliament should have power to give extra-territorial operation to its legislation in all cases where such operation is ancillary to provision for the peace, order, and good government of the Dominion.

- (iii) The principles embodied in or underlying the Colonial Laws Validity Act, 1865, and the extent to which any provisions of that Act ought to be repealed, amended, or modified in the light of the existing relations between the various members of the British Commonwealth of Nations as described in this Report.

#### (d) *Merchant Shipping Legislation*

Somewhat similar considerations to those set out above governed our attitude towards a similar, though a special, question raised in relation to Merchant Shipping Legislation. On this subject it was pointed out that, while uniformity of administrative practice was desirable, and indeed essential, as regards the Merchant Shipping Legislation of the various parts of the Empire, it was difficult to reconcile the application, in their present form, of certain provisions of the principal Statute relating to Merchant Shipping, viz., the Merchant Shipping Act of 1894, more particularly clauses 735 and 736, with the constitutional status of the several members of the British Commonwealth of Nations.

In this case also we felt that although, in the evolution of the British Empire, certain inequalities had been allowed to remain as regards various questions of maritime affairs, it was essential in dealing with these inequalities to consider the practical aspects of the matter. The difficulties in the way of introducing any immediate alterations in the Merchant Shipping Code (which dealt, amongst other matters, with the registration of British ships all over the world) were fully appreciated and it was felt to be necessary, in any review of the position, to take into account such matters of general concern as the qualifications for registry as a British ship, the status of British ships in war, the work done by His Majesty's Consuls in the interest of British shipping and seamen, and the question of Naval Courts at foreign ports to deal with crimes and offences on British ships abroad.

We came finally to the conclusion that, following a precedent which had been found useful on previous occasions, the general question of Merchant Shipping Legislation had best be remitted to a special Sub-Conference, which could meet most appropriately at the same time as the Expert Committee, to which reference is made above. We thought that this special Sub-Conference should be invited to advise on the following general lines:

To consider and report on the principles which should govern, in the general interest, the practice and legislation relating to merchant shipping in the various parts of the Empire, having regard to the change in constitutional status and general relations which has occurred since existing laws were enacted.

We took note that the representatives of India particularly desired that India, in view of the importance of her shipping interests, should be given an opportunity of being represented at the proposed Sub-Conference. We felt that the full representation of India on an equal footing with Great Britain and the Dominions would not only be welcomed, but could very properly be given, due regard being had to the special constitutional position of India as explained in Section III of this Report.

(e) *Appeals to the Judicial Committee of the Privy Council*

Another matter which we discussed, in which a general constitutional principle was raised, concerned the conditions governing appeals from judgements in the Dominions to the Judicial Committee of the Privy Council. From these discussions it became clear that it was no part of the policy of His Majesty's Government in Great Britain that questions affecting judicial appeals should be determined otherwise than in accordance with the wishes of the part of the Empire primarily affected. It was, however, generally recognized that, where changes in the existing system were proposed which, while primarily affecting one part, raised issues in which other parts were also concerned, such changes ought only to be carried out after consultation and discussion.

So far as the work of the Committee was concerned, this general understanding expressed all that was required. The question of some immediate change in the present conditions governing appeals from the Irish Free State was not pressed in relation to the present Conference, though it was made clear that the right was reserved to bring up the matter again at the next Imperial Conference for discussion in relation to the facts of this particular case.

V. *Relations with Foreign Countries*

From questions specially concerning the relations of the various parts of the British Empire with one another, we naturally turned to those affecting their relations with foreign countries. In the latter sphere, a beginning had been made towards making clear those relations by the Resolution of the Imperial Conference of 1923 on the subject of the negotiation, signature, and ratification of treaties. But it seemed desirable to examine the working of that Resolution during the past three years and also to consider whether the principles laid down with regard to Treaties could not be applied with advantage in a wider sphere.

(a) *Procedure in Relation to Treaties*

We appointed a special Sub-Committee under the Chairmanship of the Minister of Justice of Canada (The Honourable E. Lapointe, K.C.) to consider the question of treaty procedure.

The Sub-Committee, on whose report the following paragraphs are based, found that the Resolution of the Conference of 1923 embodied on most points useful rules for the guidance of the Governments. As they became more thoroughly understood and established, they would prove effective in practice.

Some phases of treaty procedure were examined, however, in greater detail in the light of experience in order to consider to what extent the Resolution of 1923 might with advantage be supplemented.

### *Negotiation*

It was agreed in 1923 that any of the Governments of the Empire contemplating the negotiation of a treaty should give due consideration to its possible effect upon other Governments and should take steps to inform Governments likely to be interested of its intention.

This rule should be understood as applying to any negotiations which any Government intends to conduct, so as to leave it to the other Governments to say whether they are likely to be interested.

When a Government has received information of the intention of any other Government to conduct negotiations, it is incumbent upon it to indicate its attitude with reasonable promptitude. So long as the initiating Government receives no adverse comments and so long as its policy involves no active obligations on the part of the other Governments, it may proceed on the assumption that its policy is generally acceptable. It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

Where by the nature of the treaty it is desirable that it should be ratified on behalf of all the Governments of the Empire, the initiating Government may assume that a Government which has had full opportunity of indicating its attitude and has made no adverse comments will concur in the ratification of the treaty. In the case of a Government that prefers not to concur in the ratification of a treaty unless it has been signed by a plenipotentiary authorized to act on its behalf, it will advise the appointment of a plenipotentiary so to act.

### *Form of Treaty*

Some treaties begin with a list of the contracting countries and not with a list of Heads of States. In the case of treaties negotiated under the auspices of the League of Nations, adherence to the wording of the Annex to the Covenant for the purpose of describing the contracting party has led to the use in the preamble of the term 'British Empire' with an enumeration of the Dominions and India if parties to the Convention but without any mention of Great Britain and Northern Ireland and the Colonies and Protectorates. These are only included by virtue of their being covered by the term 'British Empire'. This practice, while suggesting that the Dominions and India are not

on a footing of equality with Great Britain as participants in the treaties in question, tends to obscurity and misunderstanding and is generally unsatisfactory.

As a means of overcoming this difficulty it is recommended that all treaties (other than agreements between Governments) whether negotiated under the auspices of the League or not should be made in the name of Heads of States, and, if the treaty is signed on behalf of any or all of the Governments of the Empire, the treaty should be made in the name of the King as the symbol of the special relationship between the different parts of the Empire. The British units on behalf of which the treaty is signed should be grouped together in the following order: Great Britain and Northern Ireland and all parts of the British Empire which are not separate members of the League, Canada, Australia, New Zealand, South Africa, Irish Free State, India. A specimen form of treaty as recommended is attached as an appendix to the Committee's report.

In the case of a treaty applying to only one part of the Empire it should be stated to be made by the King on behalf of that part.

The making of the treaty in the name of the King as the symbol of the special relationship between the different parts of the Empire will render superfluous the inclusion of any provision that its terms must not be regarded as regulating *inter se* the rights and obligations of the various territories on behalf of which it has been signed in the name of the King. In this connection it must be borne in mind that the question was discussed at the Arms Traffic Conference in 1925, and that the Legal Committee of that Conference laid it down that the principle to which the foregoing sentence gives expression underlies all international conventions.

In the case of some international agreements the Governments of different parts of the Empire may be willing to apply between themselves some of the provisions as an administrative measure. In this case they should state the extent to which and the terms on which such provisions are to apply. Where international agreements are to be applied between different parts of the Empire, the form of a Treaty between Heads of States should be avoided.

### *Full Powers*

The plenipotentiaries for the various British units should have full powers, issued in each case by the King on the advice of the Government concerned, indicating and corresponding to the part of the Empire for which they are to sign. It will frequently be found convenient, particularly where there are some parts of the Empire on which it is not contemplated that active obligations will be imposed, but where the position of the British subjects belonging to these parts will be affected, for such Government to advise the issue of full powers on their behalf to the plenipotentiary appointed to act on



behalf of the Government or Governments mainly concerned. In other cases provision might be made for accession by other parts of the Empire at a later date.

### *Signature*

In the cases where the names of countries are appended to the signatures in a treaty, the different parts of the Empire should be designated in the same manner as is proposed in regard to the list of plenipotentiaries in the preamble to the treaty. The signatures of the plenipotentiaries of the various parts of the Empire should be grouped together in the same order as is proposed above.

The signature of a treaty on behalf of a part of the Empire should cover territories for which a mandate has been given to that part of the Empire, unless the contrary is stated at the time of the signature.

### *Coming into Force of Multilateral Treaties*

In general, treaties contain a ratification clause and a provision that the treaty will come into force on the deposit of a certain number of ratifications. The question has sometimes arisen in connexion with treaties negotiated under the auspices of the League whether, for the purpose of making up the number of ratifications necessary to bring the treaty into force, ratifications on behalf of different parts of the Empire which are separate Members of the League should be counted as separate ratifications. In order to avoid any difficulty in future, it is recommended that when it is thought necessary that a treaty should contain a clause of this character, it should take the form of a provision that the treaty should come into force when it has been ratified on behalf of so many separate Members of the League.

We think that some convenient opportunity should be taken of explaining to the other Members of the League the changes which it is desired to make in the form of treaties and the reasons for which they are desired. We would also recommend that the various Governments of the Empire should make it an instruction to their representatives at International Conferences to be held in future that they should use their best endeavours to secure that effect is given to the recommendations contained in the foregoing paragraphs.

### *(b) Representation at International Conferences*

We also studied, in the light of the Resolution of the Imperial Conference of 1923 to which reference has already been made, the question of the representation of the different parts of the Empire at International Conferences. The conclusions which we reached may be summarized as follows:

1. No difficulty arises as regards representation at conferences convened by, or under the auspices of, the League of Nations. In the case of such conferences all members of the League are invited, and

if they attend are represented separately by separate delegations. Co-operation is ensured by the application of paragraph I. 1 (c) of the Treaty Resolution of 1923.

2. As regards international conferences summoned by foreign Governments, no rule of universal application can be laid down, since the nature of the representation must, in part, depend on the form of invitation issued by the convening Government.

(a) In conferences of a technical character, it is usual and always desirable that the different parts of the Empire should (if they wish to participate) be represented separately by separate delegations, and where necessary efforts should be made to secure invitations which will render such representation possible.

(b) Conferences of a political character called by a foreign Government must be considered on the special circumstances of each individual case.

It is for each part of the Empire to decide whether its particular interests are so involved, especially having regard to the active obligations likely to be imposed by any resulting treaty, that it desires to be represented at the conference, or whether it is content to leave the negotiation in the hands of the part or parts of the Empire more directly concerned and to accept the result.

If a Government desires to participate in the conclusion of a treaty, the method by which representation will be secured is a matter to be arranged with the other Governments of the Empire in the light of the invitation which has been received.

Where more than one part of the Empire desires to be represented, three methods of representation are possible:

- (i) By means of a common plenipotentiary or plenipotentiaries, the issue of full powers to whom should be on the advice of all parts of the Empire participating.
- (ii) By a single British Empire delegation composed of separate representatives of such parts of the Empire as are participating in the conference. This was the form of representation employed at the Washington Disarmament Conference of 1921.
- (iii) By separate delegations representing each part of the Empire participating in the conference. If, as a result of consultation, this third method is desired, an effort must be made to ensure that the form of invitation from the convening Government will make this method of representation possible.

Certain non-technical treaties should, from their nature, be concluded in a form which will render them binding upon all parts of the Empire, and for this purpose should be ratified with the concurrence of all the Governments. It is for each Government to decide to what extent its concurrence in the ratification will be facilitated by its participation in the conclusion of the treaty, as, for instance, by the

appointment of a common plenipotentiary. Any question as to whether the nature of the treaty is such that its ratification should be concurred in by all parts of the Empire is a matter for discussion and agreement between the Governments.

*(c) General Conduct of Foreign Policy*

We went on to examine the possibility of applying the principles underlying the Treaty Resolution of the 1923 Conference to matters arising in the conduct of foreign affairs generally. It was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain. Nevertheless, practically all the Dominions are engaged to some extent, and some to a considerable extent, in the conduct of foreign relations, particularly those with foreign countries on their borders. A particular instance of this is the growing work in connection with the relations between Canada and the United States of America which has led to the necessity for the appointment of a Minister Plenipotentiary to represent the Canadian Government in Washington. We felt that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments. In the light of this governing consideration, the Committee agreed that the general principle expressed in relation to Treaty negotiations in Section V (a) of this Report, which is indeed already to a large extent in force, might usefully be adopted as a guide by the Governments concerned in future in all negotiations affecting foreign relations falling within their respective spheres.

*(d) Issue of Exequaturs to Foreign Consuls in the Dominions*

A question was raised with regard to the practice regarding the issue of exequaturs to Consuls in the Dominions. The general practice hitherto, in the case of all appointments of Consuls de Carrière in any part of the British Empire, has been that the foreign Government concerned notifies His Majesty's Government in Great Britain, through the diplomatic channel, of the proposed appointment and that, provided that it is clear that the person concerned is, in fact, a Consul de Carrière, steps have been taken, without further formality, for the issue of His Majesty's exequatur. In the case of Consuls other than those de Carrière, it has been customary for some time past to consult the Dominion Government concerned before the issue of the exequatur.

The Secretary of State for Foreign Affairs informed us that His Majesty's Government in Great Britain accepted the suggestion that

in future any application by a foreign Government for the issue of an exequatur to any person who was to act as Consul in a Dominion should be referred to the Dominion Government concerned for consideration and that, if the Dominion Government agreed to the issue of the exequatur, it would be sent to them for counter-signature by a Dominion Minister. Instructions to this effect had indeed already been given.

(e) *Channel of Communication between Dominion Governments and Foreign Governments*

We took note of a development of special interest which had occurred since the Imperial Conference last met, viz. the appointment of a Minister Plenipotentiary to represent the interests of the Irish Free State in Washington, which was now about to be followed by the appointment of a diplomatic representative of Canada. We felt that most fruitful results could be anticipated from the co-operation of His Majesty's representatives in the United States of America, already initiated, and now further to be developed. In cases other than those where Dominion Ministers were accredited to the Heads of Foreign States, it was agreed to be very desirable that the existing diplomatic channels should continue to be used, as between the Dominion Governments and foreign Governments, in matters of general and political concern.

VI. System of Communication and Consultation

Sessions of the Imperial Conference at which the Prime Ministers of Great Britain and of the Dominions are all able to be present cannot, from the nature of things, take place very frequently. The system of communication and consultation between Conferences becomes therefore of special importance. We reviewed the position now reached in this respect with special reference to the desirability of arranging that closer personal touch should be established between Great Britain and the Dominions, and the Dominions *inter se*. Such contact alone can convey an impression of the atmosphere in which official correspondence is conducted. Development, in this respect, seems particularly necessary in relation to matters of major importance in foreign affairs where expedition is often essential, and urgent decision necessary. A special aspect of the question of consultation which we considered was that concerning the representation of Great Britain in the Dominions. By reason of his constitutional position, as explained in section IV (b) of this Report, the Governor-General is no longer the representative of His Majesty's Government in Great Britain. There is no one therefore in the Dominion capitals in a position to represent with authority the views of His Majesty's Government in Great Britain.

We summed up our conclusions in the following Resolution which is submitted for the consideration of the Conference:

The Governments represented at the Imperial Conference are impressed with the desirability of developing a system of personal contact, both in London and in the Dominion capitals, to supplement the present system of inter-communication and the reciprocal supply of information on affairs requiring joint consideration. The manner in which any new system is to be worked out is a matter for consideration and settlement between His Majesty's Governments in Great Britain and the Dominions, with due regard to the circumstances of each particular part of the Empire, it being understood that any new arrangements should be supplementary to, and not in replacement of, the system of direct communication from Government to Government and the special arrangements which have been in force since 1918 for communications between Prime Ministers.

## VII. Particular Aspects of Foreign Relations discussed by Committee

It was found convenient that certain aspects of foreign relations on matters outstanding at the time of the Conference should be referred to us, since they could be considered in greater detail, and more informally, than at meetings of the full Conference.

### (a) *Compulsory Arbitration in International Disputes*

One question which we studied was that of arbitration in international disputes, with special reference to the question of acceptance of Article 36 of the Statute of the Permanent Court of International Justice, providing for the compulsory submission of certain classes of cases to the Court. On this matter we decided to submit no Resolution to the Conference, but, whilst the members of the Committee were unanimous in favouring the widest possible extension of the method of arbitration for the settlement of international disputes, the feeling was that it was at present premature to accept the obligations under the Article in question. A general understanding was reached that none of the Governments represented at the Imperial Conference would take any action in the direction of the acceptance of the compulsory jurisdiction of the Permanent Court, without bringing up the matter for further discussion.

### (b) *Adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice*

Connected with the question last mentioned, was that of adherence of the United States of America to the Protocol establishing the Permanent Court of International Justice.

The special conditions upon which the United States desired to become a party to the Protocol had been discussed at a special Conference held in Geneva in September, 1926, to which all the Govern-

ments represented at the Imperial Conference had sent representatives. We ascertained that each of these Governments was in accord with the conclusions reached by the special Conference and with the action which that Conference recommended.

(c) *The Policy of Locarno*

The Imperial Conference was fortunate in meeting at a time just after the ratifications of the Locarno Treaty of Mutual Guarantee had been exchanged on the entry of Germany into the League of Nations. It was therefore possible to envisage the results which the Locarno Policy had achieved already, and to forecast to some extent the further results which it was hoped to secure. These were explained and discussed. It then became clear that, from the standpoint of all the Dominions and of India, there was complete approval of the manner in which the negotiations had been conducted and brought to so successful a conclusion.

Our final and unanimous conclusion was to recommend to the Conference the adoption of the following Resolution:

The Conference has heard with satisfaction the statement of the Secretary of State for Foreign Affairs with regard to the efforts made to ensure peace in Europe, culminating in the agreements of Locarno; and congratulates His Majesty's Government in Great Britain on its share in this successful contribution towards the promotion of the peace of the world.

Signed on behalf of the Committee,

BALFOUR, *Chairman*.

November 18, 1926.

## APPENDIX

[See Section V (a)]

### SPECIMEN FORM OF TREATY

The President of the United States of America, His Majesty the King of the Belgians, His Majesty the King [*here insert His Majesty's full title*], His Majesty the King of Bulgaria, &c., &c.

Desiring

Have resolved to conclude a treaty for that purpose and to that end have appointed as their Plenipotentiaries:

The President

His Majesty the King [*title as above*]:

for Great Britain and Northern Ireland and all parts of the British Empire which are not separate Members of the League (of Nations),

*AB.*

for the Dominion of Canada,

*CD.*

for the Commonwealth of Australia,

*EF.*

## FORMAL AND INFORMAL DOCUMENTS

for the Dominion of New Zealand,

*GH.*

for the Union of South Africa,

*IJ.*

for the Irish Free State,

*KL.*

for India,

*MN.*

.....  
 who, having communicated their full powers, found in good and due form,  
 have agreed as follows:  
 .....

.....  
 In faith whereof the above-named Plenipotentiaries have signed the  
 present Treaty.

*AB*.....  
*CD*.....  
*EF*.....  
*GH*.....  
*IJ*.....  
*KL*.....  
*MN*.....

(or if the territory for which each Plenipotentiary signs is to be specified:

(for Great Britain, &c.).....*AB.*  
 (for Canada).....*CD.*  
 (for Australia).....*EF.*  
 (for New Zealand).....*GH.*  
 (for South Africa).....*IJ.*  
 (for the Irish Free State).....*KL.*  
 (for India).....*MN.)*

## VII. Foreign Relations

On the 20th October, the Secretary of State for Foreign Affairs made to the Conference a comprehensive statement on foreign affairs, and on the invitation of the Conference His Majesty's High Commissioner in Egypt attended and made a more detailed statement on the position and prospects in that country.

These statements were followed on the 25th October by a general discussion on foreign affairs, in which the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, Mr. O'Higgins, for the Irish Free State, Lord Winterton on behalf of the Indian Delegation, and Mr. Lapointe for Canada, took part. General appreciation was expressed of Sir Austen Chamberlain's review.

Opportunity was also taken to explain those aspects of foreign relations with which the Dominion Governments had been specially concerned during the last three years, in particular the various matters on which negotiations had been carried on between His Majesty's

Government in Canada and the Government of the United States of America.

As in 1923, emphasis was laid on the vital importance to the British Empire of the maintenance of the route to the East and South Pacific via the Suez Canal, and attention was directed to the bearing of these interests on the conduct of foreign relations.

*Satisfaction was expressed at the improvement in the relations of the European Powers since the Conference of 1923, and it was felt that His Majesty's Government in Great Britain were to be congratulated on their contribution towards the promotion of the peace of the world.*

The discussion made it clear that the Governments of the British Empire remain firmly attached to a policy of peace and to support of the League of Nations as the great instrument of peace.

It was decided not to publish any part of the Foreign Secretary's statement or of the resulting discussion.

## XII. Defence.

The Conference gave much consideration to the question of defence, and to the methods by which the defence arrangements of each part of the Empire could be most effectively co-ordinated.

The Prime Minister of Great Britain initiated the discussions on the 26th October by a review of the work and organization of the Committee of Imperial Defence, in the course of which he emphasized the purely advisory and consultative character of this body. He also outlined] the chief developments which had taken place since the last Conference, notably the creation of the Chiefs of Staff Sub-Committee and the decision to establish an Imperial Defence College.

After a reference to the progress already made and to the further steps to be taken in the development of the naval base at Singapore, Mr. Baldwin mentioned that the pursuance of this policy had been greatly facilitated by the contributions of the Federated Malay States, Hong Kong, and the Straits Settlements.

Mr. Baldwin was followed by the Senior Officer of the Chiefs of Staff Sub-Committee (Admiral of the Fleet Earl Beatty) in a survey of the general strategic situation, and by the Secretary of State for India in a summary of the special problems of Indian defence.

The discussions were renewed on the 15th November, when statements were made by the Prime Ministers of Canada, the Commonwealth of Australia, New Zealand, and Newfoundland, by Mr. Havenga for the Union of South Africa, by Mr. O'Higgins for the Irish Free State, and by the Maharaja of Burdwan for India.

Meetings also took place at the Admiralty, the War Office, and the Air Ministry, in which the situation from the standpoint of His



Majesty's Government in Great Britain was presented in greater detail, and other phases of common interest were considered at a meeting held at the Offices of the Committee of Imperial Defence.

Much interest attached to the opportunities afforded for observation of the various arms of the Service in operation, notably the naval review off Portland, the Army mechanical display at Camberley, and the air demonstrations at Croydon and Cardington. Apart from their interest from the point of view of defence, these displays revealed technical developments in mechanical traction and in aviation which may prove of importance in their application for civilian purposes.

The information thus obtained and the opinions exchanged will, it is believed, prove of much practical value in aiding the several Governments of the Empire in the determination of their policies of defence, and are commended to their most careful consideration.

The Conclusions reached by the Imperial Conference on the subject of Defence may be summarized as follows:

1. The Resolutions on Defence adopted at the last session of the Conference are reaffirmed.

2. The Imperial Conference regrets that it has not been possible to make greater progress with the international reduction and limitation of armaments referred to in these Resolutions. It is the common desire of the Governments represented at this Conference to do their utmost in pursuit of this object so far as this is consistent with the safety and integrity of all parts of the Empire and its communications.

3. The Conference recognizes that, even after a large measure of reduction and limitation of armaments has been achieved, a considerable effort will be involved in order to maintain the minimum standard of naval strength contemplated in the Washington Treaty on Limitation of Armament, namely, equality with the naval strength of any foreign power. It has noted the statements set forth by the Admiralty as to the formidable expenditure required within coming years for the replacement of warships, as they become obsolete, by up-to-date ships.

4. Impressed with the vital importance of ensuring the security of the world-wide trade routes upon which the safety and welfare of all parts of the Empire depend, the representatives of Australia, New Zealand, and India note with special interest the steps already taken by His Majesty's Government in Great Britain to develop the Naval Base at Singapore, with the object of facilitating the free movement of the Fleets. In view of the heavy expenditure involved, they welcome the spirit of co-operation shown in the contributions made with the object of expediting this work.

5. The Conference observes that steady progress has been made in the direction of organizing military formations in general on similar lines; in the adoption of similar patterns of weapons; and in the inter-

change of Officers between different parts of the Empire; it invites the Governments concerned to consider the possibility of extending these forms of co-operation and of promoting further consultation between the respective General Staffs on defence questions adjudged of common interest.

6. (a) The Conference takes note with satisfaction of the substantial progress that has been made since 1923 in building up the Air Forces and resources of the several parts of the Empire.

(b) Recognizing that the fullest mobility is essential to the effective and economical employment of air power, the Conference recommends, for the consideration of the several Governments, the adoption of the following principle:

The necessity for creating and maintaining an adequate chain of air bases and refuelling stations.

(c) Impressed with the desirability of still closer co-ordination in this as in all other spheres of common interest, and in particular with the advantages which should follow from a more general dissemination of the experience acquired in the use of this new arm under the widely varying conditions which obtain in different parts of the Empire, the Conference recommends for consideration by the Governments interested the adoption in principle of a system of mutual interchange of individual Officers for liaison and other duties, and of complete air units, so far as local requirements and resources permit.

7. The Conference recognizes that the defence of India already throws upon the Government of India responsibilities of a specially onerous character, and takes note of their decision to create a Royal Indian Navy.

8. The Conference notes with satisfaction that considerable progress in the direction of closer co-operation in Defence matters has been effected by the reciprocal attachment of naval, military, and air Officers to the Staff Colleges and other technical establishments maintained in various parts of the Empire, and invites the attention of the Governments represented to the facilities afforded by the new Imperial Defence College in London for the education of Officers in the broadest aspects of strategy.

9. The Conference takes note of the developments in the organization of the Committee of Imperial Defence since the session of 1923. It invites the attention of the Governments represented at the Conference to the following resolutions adopted, with a view to consultation in questions of common defence, at a meeting of the Committee of Imperial Defence held on the 30th May, 1911, in connexion with the Imperial Conference of that year:

(1) That one or more representatives appointed by the respective Governments of the Dominions should be invited to attend meetings of

the Committee of Imperial Defence when questions of naval and military defence affecting the Oversea Dominions are under consideration.

(2) The proposal that a Defence Committee should be established in each Dominion is accepted in principle. The Constitution of these Defence Committees is a matter for each Dominion to decide.

#### 4. THE TREATY POWER AND THE DOMINIONS

(*Canadian House of Commons Debates*, March 30, 1927, pp. 1705-7)

Hon. ERNEST LAPOINTE (Minister of Justice): Hereafter treaties will be made and signed, not by and for the British Empire, but by and for Great Britain and such other portions of the Empire as may be concerned in those treaties. Heretofore, even though we might be interested in any treaty of any description, if we were not represented during its negotiation and at the signing of it, the treaty was entered into nevertheless in the name of the British Empire as a whole. The change in the wording of the treaty in this regard is of the utmost importance. There will be no longer any need of the provision which has been known as the exclusion clause, such for instance as was incorporated in the Locarno Treaty. That clause was to the effect that the treaty in question could be enforced in any of the Dominions only after they had agreed to come within its provisions. Such a clause, as I say, will no longer be necessary; it will serve no useful purpose for the reason that we shall be involved in any treaty only if we are a party thereto. Treaties will be made by the King not in the name of the British Empire, but on behalf of Great Britain and whatever other section of the Empire may be a participant in and a signatory to the negotiations.

Another important change concerns the appointment of plenipotentiaries representing the King in connection with negotiations leading up to treaties and the signing of those treaties. When a few years ago I was appointed plenipotentiary to negotiate a treaty with the United States it was stated by constitutional writers that no real change had been made inasmuch as my appointment by His Majesty the King was the outcome of an Order in Council passed by the Imperial Government. The same with regard to the issuance of powers and the ratification that must take place after the signing of a treaty. That ratification was also made by His Majesty the King upon an Order in Council of the Imperial Government and not of the Canadian Government, even where Canada was concerned. Now treaties signed on behalf of Canada will be signed by a plenipotentiary appointed by His Majesty the King upon a recommendation of the Canadian Government, and the issuance of powers will be made also upon the recommendation of the Government of Canada. In the same way the ratification of treaties will be carried out upon the

recommendation of the Government of this Dominion. All the other formalities which, according to constitutional writers, have been adhered to as symbolic of the unity of the Empire have been discarded as being no longer in harmony with the conditions now prevailing among the nations of the Empire; for, as I have pointed out, the one great symbol of unity now is His Majesty the King. Let me observe that for this as for most of the other matters included in the report there is no need for any legislation; all that is needed is to harmonize the practice and usages with the present constitutional position of the Dominions. . . .

Mr. GARLAND: Just how far does the principle of equality of status extend? Does it extend, for example, to treaties involving assistance in the event of war?

Mr. LAPOINTE: No, I am sure it does not, and this by reason of these words:

It must, however, before taking any steps which might involve the other Governments in any active obligations, obtain their definite assent.

In any case where any other Government may be involved in active obligations—and the hon. member is referring to a case in which there would be such obligations—then the definite assent of the Government involved must be given.

Mr. GARLAND: Is this the implication of the Minister's remarks, that Canada in future will hold a neutral position unless she has given her assent to participation in such a treaty?

Mr. LAPOINTE: The discussion of that phase of the matter would lead me into a long argument.

Mr. GARLAND: But it is so essential.

Mr. LAPOINTE: I say that Canada will always be free to take whatever steps she thinks fit. She will not be bound to any active obligation.

Now, as to foreign affairs, the outstanding feature of the report is, I believe, the definite recognition that neither Great Britain nor the Dominions are committed to any active obligations except with the assent of their own governments or parliaments. It is stated clearly in the report. The hon. member for Labelle (Mr. Bourassa) yesterday invited me to speak of the Locarno Treaty, owing to the fact that some one had made reference to it in the British House of Commons. If my hon. friend reads the resolution in the report, as I am sure he has done many times, he will see that it is merely an expression of congratulation to the Foreign Secretary of England for the part he took in trying to bring about peace in Europe. I do not think that I am betraying any secret when I say that we have taken the position that we are not bound by the Locarno Treaty, which was initiated and entered into by the British Government without the co-operation of Canada.

5. LORD BALFOUR ON THE REPORT OF THE IMPERIAL CONFERENCE<sup>1</sup>

(*Journal of the Royal Institute of International Affairs*,  
July 1927, pp. 212-13)

Do not let us allow any exposition of possible difficulties and possible objections to divert our minds, even for an instant, from the great issue which is really before us. What is that great issue? If you want a system in which there shall be no new difficulties, in which no problems hitherto unknown to international or national law shall arise, it is quite easily done—by dissolving the British Empire. That would put an end to all those problems. You would then have a collection of enlightened self-governing communities, in friendly relation with each other, having some memory of a common ancestry and common institutions, but in no way bound together by those ties which it is easy to criticize. That was the solution of the Radical Party fifty or sixty years ago. John Bright would have had no hesitation in saying that was the proper solution. Well, I do not say that is a stupid solution, but I emphatically say that it is not a solution which, if things are managed properly, any self-governing part of the Empire will ever support. If that be so, then you have to solve a problem which had never yet, I will not say been solved, but had never yet been presented to civilized mankind. Nobody has ever tried to do what we are explicitly and emphatically trying to do, which is to have a great Empire in which the self-governing constituent parts shall each feel it is master of its own development and its own faith, and that it is bound not by law but by sentiment far deeper than law and far more fruitful of good results. It is bound to work together with the other constituent elements on a footing of equality, on a footing of mutual comprehension with a desire to further the mutual interests, and to form in themselves a great league of civilization and peace for the whole world.

One of the most fundamental considerations in the Report [of 1926] is the distinction drawn between 'status' and 'function'. Status is immutable. It is fixed, so far as my hopes go, for ever. Function is mutable. It depends upon circumstances. At present it is not an exaggeration to say that the whole defensive power of the Empire depends upon the British Fleet, for which the British taxpayer pays. That is the particular function which falls upon Great Britain for historic, economic, geographical, and other reasons. That is not the only one. One of the speakers had discussed the question of foreign affairs. It is perfectly true that if your Empire consists of self-governing elements scattered over the whole globe, it is a difficulty that we cannot put Melbourne, Sydney, and the other great cities of

<sup>1</sup> The stenographic record of Lord Balfour's speech was not revised by him before it was printed.

Australia in the same relation to Downing Street as Downing Street is to Birmingham, Edinburgh, Glasgow, Manchester, and the rest of the English cities. Some of our difficulties are commentaries upon the facts of geography. Well, I am not going to defend geography. I did not arrange the world and I am not prepared to defend the arrangement I find. All we can do is to make the best of it, and I do not think we can make the best of it in any other way than the way which we have chosen. Foreign policy must, on the whole, depend upon European considerations and, therefore, upon that part of the Empire which is the most intimately connected with Europe. I do not think there is any alternative to that. It follows that the function of those who live in the United Kingdom must inevitably be somewhat different from those of the other parts of the Empire of equal status with themselves in carrying out the common purposes of the whole. If anybody can suggest a better method for carrying out that object there is nothing in this document [the Report of the 1926 Conference] to prevent its being adopted. One of the speakers seemed to think that by the arrangement of intercourse between the Government at home and Governments of equal status elsewhere something was cut off, but I can assure you that was not the intention of any of those who met in conference last year. Whatever is done in the future, believe me, the personal intercourse never can be and never will be cut off between those who are responsible for the Government of these islands and those who are responsible for the Government of India, Australia, Canada, and the rest of the Empire. I do not think we need have any of these imaginary alarms if the goodwill, patriotism, and determination to carry out our great mission in the world remains unchanged. That is the essential point.

I am an optimist. I am a believer in the future of this marvellous organization, or want of organization, whichever you like to call it, which constitutes the British Empire; but in my most sanguine and wildest moments it never occurred to me to say or to think that the Imperial task before us was an easy one. There are forces in all communities which tend to segregation. There is always the leaning towards provincialism. Distance must produce, and will produce, its effects. Small differences of manners, customs, or language may create a wholly illusory feeling of separation far greater and far more difficult to deal with than those produced by oceans and mountains. It is for every citizen of the British Empire to try to feel himself, and try to instil into his children, the fact that he is not only responsible for the section of the Empire in which he lives and in which he votes; but the responsibility rests upon him to cultivate that larger patriotism which for the first time in history is avowedly, explicitly, and consciously thrust upon those in whose hands the fortunes of fate and the British Empire really rest.

## B. INTERNATIONAL AND INTER-IMPERIAL RELATIONS, 1927-36

## I. ELECTION OF CANADA TO THE COUNCIL OF THE LEAGUE OF NATIONS, 1927

(The London Times, September 16, 1927)

At Geneva yesterday in the election for the three vacancies in the non-permanent members in the League Council Cuba received forty votes, Finland thirty-three, and Canada twenty-six. From the British point of view the most satisfactory feature of this election is that Canada is one of the chosen three. There could have been no more emphatic international affirmation of that historical definition of British Imperial relationships which was given at the last Imperial Conference. The important outgoing members of the Council are Belgium and Czechoslovakia, both of them European States which have exerted—the first through its exceptional position in the War and the peace, the second through the energy and ability of its Foreign Minister, M. Beneš, continually supported by President Masaryk—a very powerful influence on the development of the League and on the general course of European affairs since the War. Clearly it was with regret that the small States, who constitute the majority in the Assembly, decided yesterday that Belgium, after having been a member of the Council from the beginning, could not be elected again under the new rules. The election of Canada in these conditions is of special interest. Canada is a member both of the older British League, to which Sir Austen Chamberlain said the other day his first allegiance was due, and of the new League of Nations. Since care is now taken in League business to give due weight to geographical considerations, it may be supposed that one of the reasons for the election of Canada was her important situation in North America, which is not otherwise represented in the League. A Canadian, Senator Dandurand, won distinction as President of the Assembly in 1925. And it is very clear that the position of Canada in the Western hemisphere is far stronger than that of one or two other American States who have been elected members of the Council. Be that as it may—it is a fact of great significance to the British peoples the world over that a nation which is a member of the British Empire has been chosen as a member of the Council of the League of Nations.

## 2. THE APPOINTMENT OF A BRITISH HIGH COMMISSIONER, 1928

*Speech of Welcome given by the Prime Minister,*

RT. HON. W. L. MACKENZIE KING, to SIR WILLIAM CLARK,

*British High Commissioner to Canada*

(Montreal Gazette, November 5, 1928)

. . . Following formal words of welcome to Sir William and Lady Clark, Premier King said, in part: . . .

In 1879 the Government of Sir John A. Macdonald felt that the time had arrived when the interests of Canada demanded the permanent presence in London of a representative of the Government of Canada to safeguard and further Canadian interests in the British Isles. The Government had had in London, prior to that time, a Financial Agent, but Sir John was of the view that what was required was the presence of some one with the status of a Minister who would act on instructions from his Government and would be able to speak with authority on his Government's behalf. Two matters in particular were referred to by Sir John as necessitating, in the interests of Canada, more effective representation of the Government in London: the question of trade, involving negotiation of commercial treaties, and immigration. These, however, were but two of many interests of Canada which it was felt demanded more effective representation in the Old Land. Accordingly, a representative was appointed to represent in London the interests of the Government, but was not, however, for reasons which I need not go into for the moment, styled a Minister. He was designated High Commissioner.

The first person to be appointed to the office of High Commissioner was Sir Alexander Galt, whose appointment was made in the year 1880. He was succeeded in 1884 by Sir Charles Tupper, who, in turn, was succeeded in 1896 by Lord Strathcona. Lord Strathcona's successor was Sir George Perley, who is with us to-night, and who held that highly responsible position during the very difficult and strenuous period of the War. Sir George was succeeded in 1922 by the present High Commissioner, the Honourable Peter Larkin. All of these gentlemen, each of whom bears a distinguished name, represented the Government of Canada. They did not, however, represent the Crown or the Crown plus the Government, and this for the very obvious reason that the Crown, in respect of His Majesty's Dominion of Canada, while represented in Canada by the Governor-General required no representative in London, being there represented by the Sovereign himself, or, as in the days of Queen Victoria, by Her Majesty the Queen.

Coming now to the representation in Canada of the Crown and of the Government of Great Britain, it will be recalled that in colonial days both functions were combined in the person of the Governors or Governors-General who came to the provinces of Canada, just as they are combined to-day in the existing colonies in other parts of the Empire in the person of their Governors. When, however, the several colonies which went to make up British North America were federated in a single Dominion, there came into being a more complete development of self-government and an emergence of nationhood which wrought a vital change in the position of the Governor-General. More and more the Governor-General came to be exclusively the representative of His Majesty the King, and less and less



the representative or agent of the Government of Great Britain, as distinguished from the Crown or the Crown plus the Government.

One result of this evolution has been that more and more, in our Dominion, the position of the Governor-General in relation to the administration of public affairs, in other words in relation to the people and the Government, has come, in all essential respects, to be identical with that held in Great Britain by His Majesty the King in relation to the administration of public affairs in the British Isles. In other words, the Governor-General has become in Canada, in the truest and largest sense of the word, the personal representative of the Sovereign. Another consequence, but one of an opposite character, which has resulted from this evolution, has been that while the position of Governor-General has gained in dignity and authority as that of the personal representative of His Majesty the King, the representation of the British Government as distinguished from that of the Crown has suffered a corresponding diminution, and this at a time when its interests in Canada are greater than they have ever hitherto been. It was to meet this situation, the more important the more it is considered, that the British Government decided at the Imperial Conference of 1926 to have its interests in Canada safeguarded and furthered by the appointment of a High Commissioner.

But the representation in Canada of the interests of the Government of Great Britain is not the only responsibility of Great Britain's High Commissioner in our Dominion. He will have another and perhaps even greater responsibility, that, namely, of promoting consultation and co-operation between the Governments of Great Britain and Canada in all matters which are of mutual interest or concern. That consultation and co-operation will relate not alone to questions of trade, immigration, and finance, but also to these all-important matters which arise out of inter-imperial and international relations. Here let me say that especially in large matters of this kind, where consultation is all-essential and where decisions frequently have to be reached without delay, too much importance cannot be attached to the value of personal contact. To my mind dispatches between Governments should be the last and not the first word in important negotiations. An understanding of the exact meaning and intent of the other party, and of the atmosphere in which he lives and moves and has his being is all-essential to an appreciation of what may or may not be possible in any given situation at any given time. This can be made known to a Government by its own representative, resident at the seat of Government elsewhere, as it can never be made known by correspondence between principals.

Nowhere more than in inter-imperial and international relations is it true that 'the letter killeth but the spirit maketh whole'. To see from my office window on an adjoining side of Parliament Square a building which I know to be that of the representative of the Govern-

ment of Great Britain, with whom, at a moment's notice, I can confer, or who, at a moment's notice, can confer with me; to know that we are known to each other, and that he, resident here, can learn for himself at first hand some of the considerations and problems of which the Government of Canada has to take account, and interpret them to his own Government in words which it would be impossible to place in dispatches, and that all this can be effected without directly or indirectly involving the Crown or its representative in any possible difference of opinion or controversy, cannot, as I expressed it in a conversation with Sir William Clark yesterday, be other than deeply comforting to one charged with my responsibilities, and not less an advantage to the Government whose interests it is his high privilege to represent.

### 3. THE KELLOGG TREATY FOR THE RENUNCIATION OF WAR, 1928

#### (a) *The Invitations to the Dominions*

(*The London Times*, May 25, 1928)

The United States Ambassador, Mr. A. B. Houghton, has handed to the Secretary of State for Foreign Affairs a Note, dated May 22, inviting the Governments of Australia, New Zealand, and South Africa and the Government of India to become original parties to the treaty for the renunciation of war. The United States Ministers at Ottawa and Dublin have delivered to the Canadian and Irish Free State Governments respectively identic Notes inviting these Governments to become parties to the treaty.

The text of the United States Ambassador's Note is as follows:  
Sir,—

In the Note which you addressed to me on May 19, 1928, you were good enough to inform my Government that His Majesty's Government in Great Britain had been in communication with His Majesty's Governments in the Dominions and with the Government of India and had ascertained that they were all in cordial agreement with the general principle of the multilateral treaty for the renunciation of war which the Government of the United States proposed on April 13, 1928. You added that you felt confident, therefore, that His Majesty's Governments in the Dominions and the Government of India were prepared to accept an invitation to participate in the conclusion of such a treaty as that proposed by the Government of the United States.<sup>1</sup>

<sup>1</sup> 'Your Excellency will observe that the detailed arguments in the foregoing paragraphs (regarding the proposed treaty) are expressed on behalf of His Majesty's Government in Great Britain. It will, however, be appreciated that the proposed treaty, from its very nature, is not one which concerns His Majesty's Government in Great Britain alone, but is one in which they could not undertake to participate otherwise than jointly and simultaneously with His Majesty's Governments in the Dominions and the Government of India. They have, therefore, been in communication with those Governments, and I am happy to be able to inform your

I have been instructed to state to you that my Government has received this information with the keenest satisfaction. My Government has hoped from the outset of the present negotiations that the Governments of the Dominions and the Government of India would feel disposed to become parties to the suggested anti-war treaty. It is, moreover, most gratifying to the Government of the United States to learn that His Majesty's Governments in the Dominions and the Government of India are so favourably inclined towards the treaty for the renunciation of war which my Government proposed on April 13, 1928, as to wish to participate therein individually and as original signatories, and my Government, for its part, is most happy to accede to the suggestion contained in your note to me of May 19, 1928.

Accordingly, I have been instructed to extend, through you, to His Majesty's Governments in Australia, New Zealand and South Africa, and to the Government of India, a cordial invitation, in the name of the Government of the United States, to become original parties to the treaty for the renunciation of war which is now under consideration. Pursuant to my instructions, I also have the honour to inform you that the Government of the United States will address, through you, to His Majesty's Governments in Australia, New Zealand and South Africa, and to the Government of India, at the same time and in the same manner as to the other Governments whose participation in the proposed treaty in the first instance is contemplated, any future communications which it may make on the subject of the treaty after it has been acquainted with the views of all the Governments to which its Note of April 13, 1928, was addressed.

I have &c.,

A. B. HOUGHTON.

(b) *The Acceptance by South Africa*

(*The London Times*, June 16, 1928)

The Secretary of State for Foreign Affairs has addressed the following Note, dated June 15, to Mr. Ray Atherton, United States Chargé d'Affaires in London:

Sir,—

With reference to the Note which Mr. Houghton was so good to address to me on May 22 conveying an invitation to His Majesty's Government in the Union of South Africa to become an original party to the proposed Treaty for the Renunciation of War, I have the honour to inform you that the following message has been received

Excellency that as a result of the communications which have passed it has been ascertained that they are all in cordial agreement with the general principle of the proposed treaty. I feel confident, therefore, that on receipt of an invitation to participate in the conclusion of such a treaty, they, no less than His Majesty's Government in Great Britain, will be prepared to accept the invitation.' Sir Austen Chamberlain to Mr. A. B. Houghton, May 19, 1928. *Parl. Papers (G. Britain)*, 1928, Cmd. 3109, p. 26.

by telegraph from General Hertzog, Minister of External Affairs of the Union of South Africa, for communication to you:

'Through the good offices of His Majesty's Government in the United Kingdom the contents of the Note addressed by your Excellency to his Excellency the British Secretary of State for Foreign Affairs on May 22 were duly conveyed to me. On behalf of His Majesty's Government in the Union of South Africa, I beg to state that the cordial invitation of the Government of the United States extended to His Majesty's Government in the Union of South Africa to participate individually and as an original signatory in the Treaty for the Renunciation of War which the United States Government proposed to various Governments on April 13 last, is highly appreciated, and that His Majesty's Government in the Union of South Africa will gladly take part therein, as invited, together with the other Governments whose participation in the proposed Treaty was invited in the first instance.

'In expressing their willingness to be a party to the proposed Treaty, His Majesty's Government in the Union of South Africa take it for granted—

'(a) That it is not intended to deprive any party to the proposed Treaty of any of its natural rights of legitimate self-defence;

'(b) That a violation by any one of the parties of any of the provisions of the proposed Treaty will free the other parties from obligation to observe its terms in respect of the party committing such violation; and

'(c) That provision will be made for rendering it quite clear that it is not intended that the Union of South Africa, by becoming a party to the proposed Treaty, would be precluded from fulfilling, as a member of the League of Nations, its obligations towards the other members thereof under the provisions of the Covenant of the League.'

\* \* \* The Irish Free State, Canada, Australia, New Zealand, and India have already accepted the invitation of the United States Government to participate individually in the Treaty for the Renunciation of War.

#### 4. THE LIMITATION AND REDUCTION OF NAVAL ARMAMENTS, 1930

(*Canadian House of Commons Debates*, May 26, 1930,  
pp. 2552-63)

Right Hon. W. L. MACKENZIE KING (Prime Minister) moved:

That it is expedient that Parliament do approve of the international treaty for the limitation and reduction of naval armament, London, April 22, 1930, signed in respect of the Dominion of Canada by the plenipotentiary named therein, and that this house do approve of the same.

Mr. BENNETT (Leader of the Opposition): The hon. gentleman (Hon. J. L. Ralston, Minister of Defence) stated that the United

States submitted its case indicating the ships it would require to be placed on a parity with the British Commonwealth of Nations, and he stated also that the United Kingdom then submitted its statement. Was that a statement on behalf of the British Commonwealth of Nations, and if so, what was Canada's submission in that regard, as well as the submission of Australia and the other portions of the British Empire?

Mr. RALSTON (Minister of Defence): The statement submitted by the United Kingdom was one signed and submitted on behalf of the Government of the United Kingdom.

Mr. BENNETT: What was Canada's submission?

Mr. RALSTON: The submission of Canada and also of the other Dominions was that they would agree to a collective total being stated for all the members of (the) British Commonwealth of Nations and that they would agree that their respective naval requirements would not be such as to cause that collective total to be exceeded, it being left entirely for the British Commonwealth of Nations amongst themselves to agree as to what proportion each of them would require in the way of naval armament.

Mr. BENNETT: Was any proportion agreed to on behalf of Canada?

Mr. RALSTON: No.

Mr. BENNETT: Then Canada made no offer of anything at any time at this gathering?

Mr. RALSTON: This was not a conference for the purpose of providing naval armaments. This was a conference not for agreeing to provide, but rather for the purpose of agreeing to restrict naval armaments.

Mr. BENNETT: The Minister has but evaded my question. My position, however, is this: the British Empire submission was not made as an Empire. The hon. gentleman says that the United Kingdom made the submission, and there is an agreement that the component communities comprising the British Empire would come to an understanding amongst themselves. I asked whether Canada had made any submission. He said no, that Canada had offered to reduce. What can Canada reduce beyond what she now has?

Mr. RALSTON: I told my hon. friend that the time had not come for the agreement as to contribution. We are at present talking about an agreement to restrict, and the agreement to restrict was that Canada's naval needs and requirements would not be such as to cause to be exceeded the collective total stated by the United Kingdom in its statement and which is now contained in the treaty as the collective total for the British Commonwealth of Nations. When the time comes for the members of the British Commonwealth of Nations to meet together and decide upon their requirements, that will be the time when my hon. friend's question may be properly answered.

. . . . .

Mr. WOODSWORTH: . . . The statement is made that we are to have a maximum of fifteen cruisers. I will read the text, which is subsection 3 of article 16:

The maximum number of cruisers of sub-category (a) shall be as follows: For the United States, eighteen; for the British Commonwealth of Nations, fifteen; for Japan, twelve.

How are these to be allocated? Supposing Australia built two and in that connexion it may be asked whether the *Australia* is to be scrapped, as has been suggested. If so, is Australia to build another cruiser? Supposing Canada should build two or four cruisers, and I believe the latter number was suggested by Mr. Borden. Does that mean that the total for the British Empire is to be only fifteen, and that this number is to be diminished by the cruisers provided by the various Dominions?

Mr. GARLAND (Bow River): That would leave only seven for the British Commonwealth of Nations.

Mr. WOODSWORTH: Yes, my hon. friend suggests this might mean only seven for the British Commonwealth of Nations. Will the allotment of the British Empire be cut down by the number provided by the various Dominions? From my point of view, this is the important question: is there any understanding between the Dominion and Great Britain as to how the fifteen ships are to be allocated? No indication of that is given in the report now before us, and no indication has been given by the Minister himself.

Mr. RALSTON: There is no understanding.

Mr. WOODSWORTH: It seems to me that this arrangement is a very loose one, and my former question still stands. I am glad that there is no understanding, but in case of Australia or Canada building any ships, does it mean that the number allotted to the British Commonwealth of Nations, that is fifteen, is to be cut down by the number built by the self-governing Dominions?

Mr. RALSTON: The agreement is that our naval requirements will not be such as to cause the collective total for the British Commonwealth of Nations to be exceeded. There is nothing loose about that, that makes it absolutely certain that there cannot be more than fifteen of these particular eight-inch gun cruisers afloat on the seas for the whole British Commonwealth of Nations.

Mr. WOODSWORTH: There is no arrangement as to the allocation as between Great Britain and—

Mr. RALSTON: None.

Mr. GARLAND (Bow River): In the event of Australia constructing four cruisers, which is quite possible when we realize Australia's attitude towards this question, that would leave Great Britain with only eleven? Is that satisfactorily understood?

Mr. RALSTON: There will be no danger of Australia or any other

nation constructing any vessels coming within this treaty without consultation with the other parts of the British Commonwealth of Nations.

(‘Each of the Dominions and India received a separate invitation to the Conference; each signed the Treaty as a separate High Contracting Party. . . . Throughout the Conference His Majesty’s seven delegations worked together in closest harmony and co-operated in every way to attain those ends for which it was summoned. Such co-operation was especially desirable in the case of a naval limitation conference because the members of the Commonwealth had agreed to aggregate their naval forces and to accept any total tonnage figures that might result from the Conference as representing, so far as the Commonwealth was concerned, total collective strengths. To ensure this co-operation, continual consultation among the Commonwealth delegations took place and numerous conferences were held.’ Report of Hon. J. L. Ralston, Canadian Delegate, p. 7.)

#### 5. RECOGNITION OF THE PROVISIONAL GOVERNMENT OF THE REPUBLIC OF SPAIN BY HIS MAJESTY’S GOVERNMENTS IN THE UNITED KINGDOM AND IN THE DOMINIONS, 1931

(*Canadian House of Commons Debates*, April 23, 1931, p. 890)

Right Hon. R. B. BENNETT (Prime Minister): Before the orders of the day are called, perhaps it is expected that I should communicate to the House in a formal way the recognition by His Majesty’s Government in Canada of the provisional government in Spain. Hon. members will be aware that in the first step towards the return of constitutional government, municipal elections were held throughout Spain on April 12, being the first election since the establishment of the dictatorship in 1922. They resulted in an overwhelming victory for the Republicans in all the larger centres. A republic was proclaimed at Madrid with Señor Alcalá Zamora as provisional president, and at other provincial centres. No resistance was offered by the supporters of the monarchy. The King of Spain left the country without formal abdication. The new government appears to have established its authority without disturbance. Following consultation between His Majesty’s Governments, recognition of the provisional government of the Republic of Spain was accorded in Notes delivered by His Majesty’s Ambassador at Madrid on April 22, on behalf of His Majesty’s Governments in the United Kingdom, Canada, Australia, New Zealand, South Africa, and the Irish Free State. Recognition has also been accorded by some seventeen other countries, including France and the United States.

(‘Our problem is well illustrated’, said Hon. N. W. Rowell on September 11, 1933, ‘by an incident related to me last year by His Majesty’s Ambassador to Madrid. Until the recognition of the new Spanish Republic, the recognition of a new government or a new state had always been by one instrument signed by His Majesty on behalf of the whole Empire.

When the Spanish Republic was recognized His Majesty's Ambassador deposited not one instrument, but six, one for each member of the Commonwealth. Upon depositing the sixth he said to the representative of the Republic, "These constitute recognition by the British Commonwealth." *British Commonwealth Relations* (Toynbee, A. J., edit.), p. 148.)

## 6. APPEALS TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

### (a) *The Case for Discontinuing Appeals*

(J. S. Ewart in *Queen's Quarterly*, Summer, 1930, pp. 456-61)

*Self-respect.* The best reason—the all-sufficient reason why Canadians should settle their own lawsuits, without the intervention of a group of non-Canadians sitting three thousand miles away, is based upon Canadian self-respect. As the Chief Justice of Canada has said:

While this subordination of our courts is maintained—while this badge of inferiority is attached to them—our vaunted Dominion status as a full partner in the Empire seems an idle boast, a sop thrown to our vanity.

And, as Professor A. Berriedale Keith has said:

A further and decisive mark of dependency is the appeal to the Privy Council. Nothing is more absurd than to pretend that this appeal is maintained voluntarily.

*Self-help.* With the exception of these appeals, Canadians arrange without overseas assistance all their affairs—tariffs, banks, fisheries, great industries, railways—management of these last having been transferred with conspicuous advantage from London to Montreal. Cannot we settle our own lawsuits? During many past years we have arranged all questions arising between us and the United States. And now our own international affairs are adjusted by exchange of ministers-plenipotentiary with Washington, Paris, and Tokio. Cannot we settle our own lawsuits? In the earlier days the Bishop of London exercised ecclesiastical jurisdiction in Canada. Now we arrange our own ways of getting ourselves to heaven. Our internal, external, and eternal affairs are all arranged in Canada—all except the lawsuits. Why not except, also, fixation of the rates of fare on our street cars? That, too, might be sublimated into 'a valuable link of Empire'.

*The Committee's View of Itself.* When, in 1900, Australia decided to place a limit upon the appeals, the Judicial Committee of the Privy Council defended themselves in a memorandum which I quote in divided italicized sections, and reply to, as follows:

1. *'It is impossible to overlook the fact that this jurisdiction is part of Her Majesty's prerogative, which has been exercised for the benefit of the colonies since the date of their settlement.'* The appeals were instituted, not for the benefit of the colonies, but for the purpose of keeping control over them. In 1875, when Canada proposed to cut



off the appeals, the Committee defended itself in a memorandum in which they said:

To abolish this controlling power and abandon each colony and dependency to a separate Court of Appeal of its own would obviously be to destroy one of the most important ties connecting all parts of the Empire in common obedience to the courts of law, and to renounce the last and most essential mode of exercising the authority of the Crown over its possessions abroad.<sup>1</sup>

It is for this reason that all attempts to cut down the appellate jurisdiction have been 'justly regarded with jealousy' by the British Governments;<sup>2</sup> and that stout resistance has been offered both to Canadian and Australian proposals for release.

It is hardly fair to refer to the appeals as 'part of Her Majesty's prerogative'. Lord Haldane (afterwards Lord Chancellor), when debating the Australian Commonwealth Bill in the House of Commons, said that:

The expression of which in these debates we have heard much, 'the Queen's prerogative', is a mere technical phrase and should be put aside.

2. '*It is still a powerful link between the Colonies and the Crown of Great Britain.*' For the reasons supplied by Mr. Haldane that statement is not true. The Crown has nothing to do with appeals. Links, moreover, based upon subordination, ought not to be allowed to exist.

3. '*It secures to every subject throughout the Empire the right to redress from the throne.*' The Committee are usually much more truthful than might be judged from this double-barrelled misrepresentation. No subject residing in England, Scotland, or Northern Ireland has the right to 'redress from the throne'. Under various circumstances that right does not exist in the Dominions. When it does exist, it can be exercised only by the rich, for the man of ordinary income cannot afford the expense. Appeals, moreover, never go to 'the throne' except for signature. And when, in pursuance of feudal form, the King signs a decision, he exercises no more intellectual association with the document than if he were a manikin manipulating a rubber stamp.

4. '*It provides a remedy in many cases, not falling within the jurisdiction of the ordinary courts of justice.*' So far as Canada is concerned, that is not true.

5. '*It removes causes from the influence of local prepossession.*' Unfortunately for Canada that is true. The people of every country have their prepossessions, and English judges are no exception to the rule. And so, if when referring to 'local prepossessions', the Committee meant that Canadian judges are familiar with all the features of the *milieu* in which Canadian cases arise; that they understand the

<sup>1</sup> May's *Constitutional History* (1912), vol. iii, p. 321.

<sup>2</sup> *Ibid.*

customs and habits which prevail among the Canadian people; and that they are able to observe the features of the cases in their proper perspective and as against appropriate background, then I may confidently affirm that to remove litigation from men so well equipped, and to submit it to judges who carry with them a wholly different set of prepossessions is to make a very absurd change. The hollowness of the argument, moreover, may be seen if we ask whether English lawyers would apply it to their own cases. When Mr. Chamberlain proposed an Imperial Court of Appeal, he was told that the idea of submitting English cases to a conglomerate court was ridiculous. That it would help to remove causes from 'local prepossessions' was true, but for that very reason the proposal was heartily condemned.

6. *'It affords a means of maintaining the uniformity of the laws of England and her colonies, which derive a great body of their laws from Great Britain.'* To this there are three replies:

(1) It would be difficult to name a single decision of the Court which has had beneficial effect in the respect referred to.

(2) If 'uniformity of the laws' be a desideratum, we must commence not with the courts, but with the legislatures. In Canada, we have nine of them making diverse laws; in Australia there are six; and in the United Kingdom, although there is but one Parliament, the English system of law is fundamentally different from the Scotch. We cannot have uniformity in the courts until all these legislatures adopt the practice of passing uniform statutes.

(3) But is uniformity-pressure by the Privy Council desirable? In the debate on the Australian Commonwealth Bill Mr. Asquith gave their Lordships credit for acting on precisely contrary principles. He said that it had been their special care to maintain,

most zealously and scrupulously, the integrity of the different systems of laws; that they have prevented, as far as they can, any filtration of ideas from a foreign source of law which might permeate and corrupt another system. . . . You cannot have a uniform interpretation of diverse systems of law.

These observations are specially applicable to constitutional questions; and, if we should ever have an Imperial Court of Appeal, with Australian judges taking part in the decision of Canadian constitutional cases, it will be impossible that we shall escape endeavours to make our constitution conform to theirs. The *naïveté* of the suggestion as to uniformity may be appreciated when we remember that the House of Lords and the Privy Council are unable to keep themselves in harmony. At the Imperial War Conference of 1918, Sir Robert Borden said:

And sometimes we have this anomaly, that a decision of the House of Lords which is binding upon English Courts, and a decision of the Privy Council which is binding upon the courts of the various Dominions, may not be entirely consistent.

7. 'It enables them, if they think fit, to obtain a decision in the last resort from the highest judicial authority, composed of men of the greatest legal capacity, existing in the metropolis.' When dealing with cases within the ambit of their experience and learning, the Committee may be regarded as being composed of men very well fitted for their work. But they are not so well able to deal with cases outside that limit (for example with questions involving the construction of federal constitutions, or the Quebec Codes, or relating to systems of land registration), as are other men who have the advantage of them in that respect.

*Unsatisfactory Experience—Dominions Secondary.* Among the reasons for the unsatisfactory working of the appeal system is the fact that Dominion cases are regarded (naturally enough) as of secondary importance. The Lord Chancellor and the Law Lords sit judicially both in the Privy Council and in the House of Lords. Some of them are good. Some are not so good. And when, as often happens, both courts are simultaneously at work, apportionment of the judges has to be made, what happens? Mr. Haldane (afterwards Lord Chancellor), speaking in the Commons on the Australian Commonwealth Bill, said:

If there are two tribunals sitting for the dispatch of the same business, the one is starved in order to keep up the other, and the judicial strength inevitably gravitates toward the House of Lords; and until you make the colonials feel that the tribunal to which they come is the same as that to which you yourselves appeal, you will never get their confidence. The result has been that though the Privy Council is considered good enough for the colonies, it is not allowed in Great Britain and Ireland to be good enough for us.

. . . Not only are the poorer judges assigned to the Privy Council, but sometimes only three of them make their appearance. Complaint on this score was made during the Conference of 1907. Improvement was promised, but the same condition continues. During last year the complaint was renewed. . . .

### (b) *The Case for Appeals*

(George H. Sedgewick in *Queen's Quarterly*, Summer, 1930, pp. 474-89)

I propose to deal with Mr. Ewart's objections to the appeal by following some at least of the headings under which those objections are grouped. I think I can show that substantially all of his objections can be successfully met, but I recognize that even in doing this the heart of the question has not been reached. The wisdom of maintaining appeals must be based on vastly different considerations.

A peculiar reason for abolishing the appeal is found by Mr. Ewart in the Judicial Committee's own view of itself. He goes back to

memoranda prepared by the Committee in 1875 and in 1900. Our constitutional development, even since 1900, has been so great and so much water has run under the bridge since then that one might reasonably pay little attention to an argument based on those memoranda. In any event, my reasons as a Canadian for regarding the appeal as valuable may be very different from those which sixty or thirty years ago seemed valid to the Committee itself, and may have some validity even if the Judicial Committee never thought of them.

Mr. Ewart says that it is 'hardly fair to refer to the appeals as part of Her Majesty's prerogative'. There seems to be no doubt that there are two classes of appeal, namely, those which lie by virtue of Imperial, Dominion, or Provincial legislation, and those which lie by virtue of the royal prerogative. The Ontario Act relating to appeals to the Privy Council expressly provides for appeals in certain cases to the Judicial Committee, while the Supreme Court Act of the Dominion which provides that the judgement of that Court shall be final and conclusive and that appeals shall not lie to the Judicial Committee contains this significant exception—'saving any right which His Majesty may be graciously pleased to exercise by virtue of his royal prerogative'. The section of the Criminal Code respecting appeals expressly enacts that there shall be no appeal to the Judicial Committee 'notwithstanding any royal prerogative'. These Acts indicate that there is an appeal by virtue of the royal prerogative and that the fact of its existence is recognized by the Parliament of Canada. The Judicial Committee has in many judgements recognized the existence of both classes of appeals. If and when the Imperial Parliament repeals the Colonial Laws Validity Act so far as that Act affects Dominion legislation, then, if the Dominion Supreme Court Act and the Criminal Code retain the existing provisions respecting appeals, there can be no appeal to the Judicial Committee in a criminal case, but appeals from the Supreme Court to the Judicial Committee will continue in the same manner as they do now and that expressly by virtue of the royal prerogative. . . .

Mr. Ewart suggests untruthfulness on the part of the Judicial Committee when its memorandum states that the appeal 'secures to every subject throughout the Empire the right to redress from the throne'. Mr. Ewart calls this a 'double-barrelled misrepresentation'. It is not in fact a misrepresentation. I shall quote later from the judgement in the *Nadan* case the remarks of Lord Chancellor Cave on the point expressly contrary to Mr. Ewart's statement. Mr. Ewart may still say he is right and that I am wrong, but I have the authority of the Lord Chancellor of Great Britain in a judgement of our highest appeal court.

Even if the right does exist, says Mr. Ewart, it can be exercised only by the rich. That is true in all litigation. The more important the case the more it costs. In the case of the *Toronto Railway*

*Company v. King*, L.R. 1908, A.C. 260, the wife and daughter of a delivery-van driver killed by a street car in Toronto obtained a judgement against the Toronto Railway Company. The Court of Appeal for Ontario ordered the case sent back for a new trial, a great expense to the widow and daughter. The Railway Company appealed to the Judicial Committee claiming that the action should be dismissed. The Judicial Committee not only disallowed the appeal, but allowed the widow and daughter to appeal then and there against the Court of Appeal's judgement and reinstated the trial judgement—such a relief for the poor widow and daughter and such a cutting through of red tape as only 'the throne' could or would attempt. . . .

There is something to be said for the position taken by the Judicial Committee in the memoranda derided by Mr. Ewart, that the appeal to the Judicial Committee affords a means of maintaining the uniformity of the laws of England and her colonies which derive a great body of their laws from Great Britain. It seems to me that the statement refers only to those of the colonies which are under the English system, and to uniformity not of statute laws, but of the principles of English Common Law and Equity. Mr. Ewart says 'It would be difficult to name a single decision of the Judicial Committee which had the reforming effects in the respect referred to'. We have had just such a situation in Canada. In the case of *Cox v. Adams*, 35 S.C.R. 393, the Supreme Court of Canada held that when a person dealing with a husband takes a guarantee or security from the wife he must see to it that the wife has independent advice. That judgement, pronounced in 1904, was, without doubt, not in accord with English law, but it remained a binding authority and was followed in Canada until in another Canadian case, *Bank of Montreal v. Stuart*, L.R. 111, A.C. 120, the Privy Council overruled the judgement in *Cox v. Adams* and brought the Canadian law on this point once more into line with that of England. There is much to be said in favour of providing a means of keeping English and Canadian law respecting ordinary and common business transactions as nearly alike as possible. This is so obvious as to render discussion unnecessary. I can think of no means to this end other than such a body as the Judicial Committee with the necessary appellate jurisdiction.

There is a possibility, rather remote, that the House of Lords as a Court of Appeal and the Judicial Committee may be out of line the one with the other. This, however, is a matter which may be worked out, as all matters under British practice have been worked out, when the serious situation definitely arises. It is not a fantastic fancy to believe that some day the appellate jurisdiction of the House of Lords and of the Judicial Committee may be united in one Court of Appeal for the Empire.

Mr. Ewart suggests—and apparently Professor Keith is of the same opinion—that the Dominion cases are regarded by the Law Lords as

of secondary importance, and he quotes remarks of Lord Haldane made in 1900 and 1905 in support of this contention. The years 1900 and 1905 belong to a remote period in relation to the matter under consideration. Lord Haldane himself tells (*Autobiography*, p. 249) of his efforts to strengthen the Judicial Committee. 'One of my ambitions', he says, 'in going to the Woolsack was to accomplish what I had for many years seen to be necessary, the strengthening of the Judicial Committee of the Privy Council. . . . For want of judges that Tribunal has been too often allowed to sit with only three members present, to hear appeals from Dominion Courts of five judges. The Dominions had begun to criticize the composition of the neglected Court and to point out that the available judicial strength was being concentrated in the House of Lords in preference to it.' Later in the same work Lord Haldane tells what he accomplished. 'Returning now to the composition of the Judicial Tribunals of the House of Lords and the Privy Council I managed in 1913 in the face of a good deal of difficulty to get an Act through which enabled us to add two new paid Law Lords to the service of these tribunals. . . .'

Mr. Ewart's fundamental error is that he regards the right of appeal to the Judicial Committee as a burden imposed on Canada as a nation. As a matter of fact this is not the case. The right of appeal is a property right or civil right which every British subject has as incidental to his right to petition and is, I think, in any event since the Judicial Committee Act of 1833, a right which every person entitled to sue in any court of the British Empire possesses by reason of his existence in a position where he can invoke the authority of a Dominion or Colonial Court. I can find no basis for Mr. Ewart's statement that 'the appeals were instituted not for the benefit of the Colonies, but for the purpose of keeping control over them'. The Judicial Committee Act confers no right other than a right of appeal to Colonial litigants. The right existed by way of a plea for the exercise of the Royal Prerogative long before any Judicial Committee Acts were passed, and I find it impossible to conceive how the Crown could be interested in maintaining any such proceeding as a means of exercising its own control. Viscount Cave, when Lord Chancellor, stated the point as follows: 'The practice of invoking the exercise of the royal prerogative by way of appeal from any Court in His Majesty's Dominions has long obtained throughout the British Empire. In its origin such an application may have been no more than a petitory appeal to the Sovereign as the fountain of justice for protection against an unjust administration of the law; but if so, the practice has long since ripened into a privilege belonging to every subject of the King. In the United Kingdom the appeal was made to the King in Parliament, and was the foundation of the appellate jurisdiction of the House of Lords. But in His Majesty's Dominions beyond the seas the method of appeal to the King in Council has

prevailed and is open to all the King's subjects in these Dominions.' (*Nadan v. The King*, L.R. 482, at p. 491.) Statutes may create exceptions, but, speaking broadly, the Judicial Committee, regarding the right of appeal as a right in the individual appellant, has, as it should, regarded every statutory encroachment on this right with suspicion, and has adjudged the appellant to be not entitled to such right only on very clear and specific authority.

If then the right is a right of the individual there is no need for regarding the submitting the right of appeal as involving a lack of self-respect. Why should I lose my self-respect in availing myself of a tribunal which my residence in a British Dominion entitles me to make use of, and if I and the majority of my fellow Canadians wish to preserve the appeal why should I and my fellow Canadians feel any loss of self-respect? The appeal to the Judicial Committee is not a burden which I suffer but a right which I enjoy. . . .

I am not greatly concerned about maintaining the appeal to the Judicial Committee as a link of Empire. If any relation is maintained only as a link of Empire its value for the purpose is doubtful. The relation must be one which affected people regard with satisfaction. There was a time when the presence of British Garrisons in Quebec, Kingston, and Halifax spoke comfortable words to the people of Canada. No one would suggest that bringing back the Garrisons would be a link of Empire to-day. The result would be to divide rather than to unite. If in the course of the years the Supreme Court of Canada overshadows the Judicial Committee in learning and quality the people of Canada may be relied on to take appropriate steps in the circumstances. In the meantime the people of Canada choose to maintain the appeal.

(c) *Moore v. Attorney-General of the Irish Free State* (1935),  
51 *Times Law Reports*, pp. 504-8

This was a preliminary point, under an Order in Council, which raised the question as to the validity and effect of the Constitution (Amendment No. 22) Act, 1933, of the Parliament of the Irish Free State, which purported to abolish the right of appeal from the Supreme Court of the Irish Free State to His Majesty in Council. . . .

The Lord Chancellor, in giving the judgement of the Board, said:

The (Anglo-Irish) Treaty received the force of law, both in the United Kingdom and in Ireland, by reason of the passing of an Act of the Imperial Parliament; and the Constituent Act owed its validity to the same authority.

Before referring to the material clauses of the Constitution it will be convenient to quote Articles 1 and 2 of the Treaty, which are as follows:

1. Ireland shall have the same constitutional status in the Community of Nations known as the British Empire as the Dominion of Canada, the

Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa, with a Parliament having powers to make laws for the peace, order, and good government of Ireland and an Executive responsible to that Parliament, and shall be styled and known as the Irish Free State. 2. Subject to the provisions hereinafter set out the position of the Irish Free State in relation to the Imperial Parliament and Government and otherwise shall be that of the Dominion of Canada, and the law, practice, and constitutional usage governing the relationship of the Crown or the representative of the Crown and of the Imperial Parliament to the Dominion of Canada shall govern their relationship to the Irish Free State.

The construction and effect of Article 2 were considered by the Judicial Committee in *Performing Right Society v. Bray Urban District Council* ((1930), A.C. 377, at pp. 395, 396). It was there held that the words of that article specially ensured the right to petition His Majesty in Council, because that right was part of the law, practice, and constitutional usage then governing the relationship of the Crown or representative of the Crown and of the Imperial Parliament to the Dominion of Canada. Their Lordships in the present case follow that decision. . . .

On May 14, 1929, the Oireachtas passed an Act, the Constitution (Amendment No. 16) Act, 1929, which substituted for the eight years specified in Article 50, as being the period during which amendment might be made without a referendum, a period of 16 years. All the subsequent amendments which are referred to in this judgement were made without a referendum in accordance with this amendment. Mr. Wilfrid Greene, for the petitioners, rightly conceded that amendment No. 16 was regular, and that the validity of these subsequent amendments could not be attacked on the ground that they had not been submitted to the people by referendum.

On December 11, 1931, the Statute of Westminster, hereinafter called the Statute, was enacted. It was the result of the proceedings at the Imperial Conference, 1930, in which representatives of the Irish Free State took part, together with the delegates of the other Dominions. That fact is recorded in the first recital, and in the last recital it is recorded that the Irish Free State, with the other Dominions, had requested and consented to the submission of the measure to the Parliament of the United Kingdom. Section 1 includes in the expression Dominion (with the other Dominions) the Irish Free State. . . .

On May 3, 1933, the Oireachtas passed an Act, No. 6 of 1933, entitled the Constitution (Removal of Oath) Act, 1933. That Act, by section 2, provided that section 2 of the Constitution of the Irish Free State (Saorstát Éireann) Act, 1922, should be repealed and, by section 3, that Article 50 of the Constitution should be amended by deleting the words 'within the terms of the Scheduled Treaty'.<sup>1</sup>

<sup>1</sup> The relevant part of Article 50 reads: 'Amendments of this Constitution within the terms of the Scheduled Treaty may be made by the Oireachtas', &c.



Finally, on November 15, 1933, the Oireachtas, as already stated, enacted the Constitution (Amendment No. 22) Act, 1933, amending Article 66 of the Constitution so as to terminate the right of appeal to His Majesty in Council.

It is clear that, if this last-mentioned amending Act is valid, the petition must fail because the amendment of the Constitution embodied in that Act must bar the right of appeal to the King in Council, if it is effective. But it cannot be effective unless the earlier Act (No. 6 of 1933) is also valid—namely, that which is directed to removing from Article 50 the condition that there can be no amendment of the Constitution unless it is within the terms of the Scheduled Treaty. On the construction of Article 2 of the Treaty, which has been adopted above, Article 50, while it stands unamended, must prevent any amendment of the Constitution which would impair that right of appeal—that is, any amendment whereby the right of appeal to the King in Council is to be impaired. Hence it must be determined whether the Act of the Oireachtas, No. 6 of 1933, was validly enacted.

Mr. Greene, for the petitioners, has contended that . . . a Constitution was established which is described as a semi-rigid Constitution—that is, one capable of being amended in detail in the different articles according to their terms, but not susceptible of any alteration so far as concerns the Constituent Act, unless perhaps by the calling together of a new Constituent Assembly by the people of Ireland. Thus the articles of the Constitution may only be amended in accordance with Article 50, which limits amendments to such as are within the terms of the Scheduled Treaty. On that view Mr. Greene argues that the Law No. 6 of 1933 is *ultra vires* and hence that the Amendment No. 22 of 1933 falls with it. . . .

But their Lordships cannot accept these contentions. In their opinion, the Constituent Act and the Constitution of the Irish Free State derived their validity from the Act of the Imperial Parliament, the Irish Free State Constitution Act, 1922. . . . It has been pointed out in the foregoing that in the Statute the Irish Free State was treated as one of the Dominions, the delegates of which took part in the Imperial Conference of 1930. The Irish Free State is, in their Lordships' judgement, bound by the Acts of the Imperial Parliament in the same way as any other of the Dominions. If it were not for Section 2 of the Statute the Oireachtas would have had no power to amend or repeal an Act of the Imperial Parliament, and has now such power only so far as any such Act is part of the law of the Dominion in virtue of Section 2 of the Statute. Hence the Act No. 6 of 1933 and the Amendment No. 22 of 1933, and certain other Acts of the Oireachtas not here material which contain amendments of the articles which are not within the terms of the Treaty, are only valid Acts of the Oireachtas in virtue of the Statute. For the Statute alone

gives to the Oireachtas power to repeal or amend the Constituent Act, which has the force of an Imperial enactment by reason that it is embodied in the Irish Free State Constitution Act, 1922. . . .

The position may be summed up as follows: (1) The Treaty and the Constituent Act respectively form parts of the Statute law of the United Kingdom, each of them being parts of an Imperial Act. (2) Before the passing of the Statute of Westminster it was not competent for the Irish Free State Parliament to pass an Act abrogating the Treaty because the Colonial Laws Validity Act forbade a Dominion Legislature to pass a law repugnant to an Imperial Act. (3) The effect of the Statute of Westminster was to remove the fetter which lay upon the Irish Free State Legislature by reason of the Colonial Laws Validity Act. That Legislature can now pass Acts repugnant to an Imperial Act. In this case they have done so.

It would be out of place to criticize the legislation enacted by the Irish Free State Legislature. But the Board desire to add that they are expressing no opinion upon any contractual obligation under which, regard being had to the terms of the Treaty, the Irish Free State lay. The simplest way of stating the situation is to say that the Statute of Westminster gave to the Irish Free State a power under which they could abrogate the Treaty, and that, as a matter of law, they have availed themselves of that power.

Mr. Greene has finally contended that the amendment is invalid because it affects the prerogative of the King in a matter outside the Dominion and outside the competence of the Oireachtas. It might be possible to state many objections to this contention, but it is enough here to say that whatever might be the position of the King's prerogative if it were left as a matter of the common law, it is here in this particular respect and in this particular enactment made matter of Parliamentary legislation, so that the prerogative is *pro tanto* merged in the Statute, and the Statute gives powers of amending and altering the statutory prerogative. This objection also fails.

In the result their Lordships are of opinion that the petition should fail and be dismissed. They will humbly so advise His Majesty.

*C. REPORT OF THE CONFERENCE ON THE OPERATION OF  
DOMINION LEGISLATION AND MERCHANT SHIPPING  
LEGISLATION, 1929*

(pp. 10-51)

PART II. Origin and Purpose of Conference

*General.*

6. The present Conference owes its origin to a recommendation contained in the Report of the Imperial Conference of 1926. The Inter-Imperial Relations Committee of that Conference made a recommendation, which was approved by the full Conference, that

a Committee should be set up to examine and report upon certain questions connected with the operation of Dominion legislation, and that a Sub-Conference should be set up simultaneously to deal with merchant shipping legislation. This recommendation was approved by the Governments concerned, and the present Conference was established to carry out those tasks.

. . . . .

### *The Questions before the Conference.*

15. In approaching the inquiry into the subjects referred to them, the present Conference have not considered it within the terms of their appointment to re-examine the principles upon which the relations of the members of the Commonwealth are now established. These principles of freedom, equality, and co-operation have slowly emerged from the experience of the self-governing communities now constituting that most remarkable and successful experiment in co-operation between free democracies which has ever been developed, the British Commonwealth of Nations; they have been tested under the most trying conditions and have stood that test; they have been given authoritative expression by the Governments represented at the Imperial Conference of 1926: and have been accepted throughout the British Commonwealth. The present Conference have therefore considered their task to be merely that of endeavouring to apply the principles, laid down as directing their labours, to the special cases where law or practice is still inconsistent with those principles, and to report their recommendations as a preliminary to further consideration by His Majesty's Governments in the United Kingdom and in the Dominions.

16. The three heads of the terms of reference to the Conference, apart from the question of merchant shipping, which is dealt with separately, may be classified briefly as dealing with:

- (i) Disallowance and Reservation;
- (ii) The extra-territorial operation of Dominion legislation;
- (iii) The Colonial Laws Validity Act, 1865.

17. It seems convenient to give some indication of the origin and nature of the questions which arise in each case, and then to state the recommendations of the Conference under each head.

## PART III. Disallowance and Reservation

### (1) *Disallowance*

#### *Present Position.*

18. The power of disallowance means the right of the Crown, which has hitherto been exercised (when occasion for its exercise has arisen) on the advice of Ministers in the United Kingdom, to annul an Act passed by a Dominion or Colonial Legislature.

19. The prerogative or statutory powers of His Majesty the King to disallow laws made by the Parliament of a Dominion, where such powers still subsist, have not been exercised for many years, and it is desirable that the position with regard to disallowance should now be made clear.

20. Whatever the historical origin of the power of disallowance may have been, it has now found a statutory expression in most of the Dominion Constitutions and accordingly the power of disallowance in reference to Dominion legislation exists and is regulated solely by the statutory provisions of those Constitutions.<sup>1</sup>

21. Section 58 of the New Zealand Constitution Act, 1852, and Section 56 of the British North America Act, 1867, empower the King in Council to disallow any Act of the Parliament of either Dominion within a period of two years from the receipt of the Act from the Governor-General. In Section 59 of the Constitution of the Commonwealth of Australia (1900) and Section 65 of the South Africa Act, 1909, the period prescribed is one year after the assent of the Governor-General has been given. The Irish Free State Constitution contains no provision for disallowance.

22. A distinction must, of course, be drawn between the existence of these provisions and their exercise. In the early stages of responsible government cases of disallowance occurred not infrequently merely for the reason that the legislation disallowed did not commend itself on its merits to the Government of the United Kingdom. This practice did not, however, long survive, for it was realized that under the conditions of self-government the power of disallowance should only be exercised where grave Imperial interests were concerned, and that such intervention was improper with regard to legislation of purely domestic concern. In fact, the power of disallowance has not been exercised in relation to Canadian legislation since 1873 or to New Zealand legislation since 1867; it has never been exercised in relation to legislation passed by the Parliaments of the Commonwealth of Australia or the Union of South Africa.

### *Recommendations.*

23. The Conference agree that the present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation. Accordingly, those Dominions who possess the power to amend their Constitutions in this respect can, by following the prescribed procedure, abolish the legal power of disallowance if they so desire. In the case of those Dominions who do not possess this power, it would be in accordance with constitutional practice that, if so requested by the Dominion concerned, the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

<sup>1</sup> Note.—This does not apply to Newfoundland where the Constitution is based on Letters Patent and not on Statute.

*Special Position in relation to the Colonial Stock Act, 1900.*

24. The special position in relation to the Colonial Stock Act, 1900, may conveniently be dealt with in this place. This Act empowers His Majesty's Treasury in the United Kingdom to make regulations governing the admission of Dominion stocks to the list of trustee securities in the United Kingdom. One of the conditions prescribed by the Treasury which at present govern the admission of such stocks is a requirement that the Dominion Government shall place on record a formal expression of its opinion that any Dominion legislation which appears to the Government of the United Kingdom to alter any of the provisions affecting the stock to the injury of the stockholder or to involve a departure from the original contract in regard to the stock would properly be disallowed. We desire to place on record our opinion that, notwithstanding what has been said in the preceding paragraph, where a Dominion Government has complied with this condition and there is any stock (of either existing or future issues of that Government) which is a trustee security in consequence of such compliance, the right of disallowance in respect of such legislation must remain and can properly be exercised. In this respect alone is there any exception to the position as declared in the preceding paragraph.

25. The general question of the terms on which loans raised by one part of the British Commonwealth should be given the privilege of admission to the Trustee List in another part falls naturally for determination by the Government of the latter, and it is for the other Governments to decide whether they will avail themselves of the privilege on the terms specified. It is right, however, to point out that the condition regarding disallowance makes it difficult and in one case impossible for certain Dominions to take advantage of the provisions of the Colonial Stock Act, 1900.

*(2) Reservation**Present Position.*

26. Reservation means the withholding of assent by a Governor-General or Governor to a Bill duly passed by the competent Legislature in order that His Majesty's pleasure may be taken thereon.

27. Statutory provisions dealing with reservation of Bills passed by Dominion Parliaments may be divided into (1) those which confer on the Governor-General a discretionary power of reservation and (2) those which specifically oblige the Governor-General to reserve Bills dealing with particular subjects.

28. The discretionary power of reservation is dealt with in Sections 56 and 59 of the New Zealand Constitution Act, 1852, Sections 55 and 57 of the British North America Act, 1867, Sections 58 and 60 of the Constitution of the Commonwealth of Australia (1900),

Sections 64 and 66 of the South Africa Act, 1909, and Article 41 of the Constitution of the Irish Free State.

29. Provisions requiring Bills relating to particular subjects to be reserved by the Governor-General for the signification of His Majesty's pleasure exist in the Australian, New Zealand, and South African Constitutions. By Section 65 of the New Zealand Constitution Act, 1852, the General Assembly of New Zealand is given power to alter the sums allocated by the Schedule to the Act for the Governor's salary, the Judges, the establishment of the general government and native purposes respectively, but any Bill altering the salary of the Governor or the sum allocated to native purposes must be reserved. By Section 74 of the Constitution of the Commonwealth of Australia (1900), it is provided that the Commonwealth Parliament may make laws limiting the matters in which special leave to appeal from the High Court of Australia to His Majesty in Council may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for the signification of His Majesty's pleasure. The South Africa Act, 1909, contains three sections relating to the reservation of Bills dealing with particular subjects. Section 106 contains provisions similar to those in Section 74 of the Constitution of the Commonwealth of Australia. Section 64 provides that all Bills repealing or amending that section or any of the provisions of Chapter IV of the Act under the heading 'House of Assembly' and all Bills abolishing provincial councils or abridging the powers conferred on them under Section 85 shall be reserved. By paragraph 25 of the Schedule to the Act, which lays down the terms and conditions on which the Governor in Council may undertake the government of native territories if transferred to the Union under Section 151, it is provided that all Bills to amend or alter the provisions of this Schedule shall be reserved. There is no provision requiring reservation in either the Canadian or Irish Free State Constitutions.

30. Provisions relating to compulsory reservation are also to be found in the Colonial Courts of Admiralty Act, 1890, and in the Merchant Shipping Act, 1894. These provisions are dealt with in another section of this Report.

31. The power of reservation had its origin in the instructions given by the Crown to the Governor of a Colony as to the exercise by him of the power to assent to Bills passed by the colonial legislative body. It has been embodied in one form or another in the Constitutions of all the Dominions and may be regarded in their case as a statutory and not a prerogative power. Its exercise has involved the intervention of the Government of the United Kingdom at three stages—in the instructions to the Governor concerning the classes of Bills to be reserved, in the advice tendered to the Crown regarding the giving or withholding assent to Bills actually reserved, and in the

forms in use for signifying the Royal pleasure upon a reserved Bill. Reservation found a place naturally enough in the older colonial system under which the Crown exercised supervision over the whole legislation and administration of a Colony through Ministers in the United Kingdom. In the earlier stages of self-government, supervision over legislation did not at once disappear, but it was exercised in a constantly narrowing field with the development of the principles and practice of responsible government. As regards the Dominions, it gradually came to be realized that the attainment of the purposes of reservation must be sought in other ways than through the use of powers by the Government of the United Kingdom. The present constitutional position is set forth in the statement of principles governing the relations of the United Kingdom and the Dominions contained in the Report of the Imperial Conference of 1926; and we have to apply these principles to the power of reservation and its exercise in the conditions now established.

### *Recommendations*

#### *Discretionary Reservation.*

32. Applying the principles laid down in the Imperial Conference Report of 1926, it is established first that the power of discretionary reservation if exercised at all can only be exercised in accordance with the constitutional practice in the Dominion governing the exercise of the powers of the Governor-General; secondly, that His Majesty's Government in the United Kingdom will not advise His Majesty the King to give the Governor-General any instructions to reserve Bills presented to him for assent, and thirdly, as regards the signification of the King's pleasure concerning a reserved Bill, that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom against the views of the Government of the Dominion concerned.

#### *Compulsory Reservation—Principle governing the signification of the King's pleasure.*

33. In cases where there is a special provision requiring the reservation of Bills dealing with particular subjects, the position would in general fall within the scope of the doctrine that it is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs and that consequently it would not be in accordance with constitutional practice for advice to be tendered to His Majesty by His Majesty's Government in the United Kingdom in any matter appertaining to the affairs of a Dominion against the views of the Government of that Dominion.

34. The same principle applies to cases where alterations of a Constitution are required to be reserved,

*Abolition of the Power of Reservation (Discretionary or Compulsory)*

35. As regards the continued existence of the power of reservation, certain Dominions possess the power by amending their Constitutions to abolish the discretionary power and to repeal any provisions requiring reservation of Bills dealing with particular subjects, and it is, therefore, open to those Dominions to take the prescribed steps to that end if they so desire.

36. As regards Dominions that need the co-operation of the Parliament of the United Kingdom in order to amend the provisions in their Constitutions relating to reservation, we desire to place on record our opinion that it would be in accordance with constitutional practice that if so requested by the Dominion concerned the Government of the United Kingdom should ask Parliament to pass the necessary legislation.

## PART IV. The Extra-territorial Operation of Dominion Legislation

*The present position as to the competence of Dominion Parliaments to give their legislation extra-territorial operation*

37. In the case of all Legislatures territorial limitations upon the operation of legislation are familiar in practice. They arise from the express terms of statutes or from rules of construction applied by the Courts as to the presumed intention of the Legislature, regard being had to the comity of nations and other considerations. But in the case of the legislation of Dominion Parliaments there is also an indefinite range in which the limitations may exist not merely as rules of interpretation but as constitutional limitations. So far as these constitutional limitations exist there is a radical difference between the position of Acts of the Parliament of the United Kingdom in the United Kingdom itself and Acts of a Dominion Parliament in the Dominion.

38. The subject is full of obscurity and there is conflict in legal opinion as expressed in the Courts and in the writings of jurists both as to the existence of the limitation itself and as to its extent. There are differences in Dominion Constitutions themselves which are reflected in legal opinion in those Dominions. The doctrine of limitation is the subject of no certain test applicable to all cases, and constitutional power over the same matter may depend on whether the subject is one of a civil remedy or of criminal jurisdiction. The practical inconvenience of the doctrine is by no means to be measured by the number of cases in which legislation has been held to be invalid or inoperative. It introduces a general uncertainty which can be illustrated by questions raised concerning fisheries, taxation, shipping, air navigation, marriage, criminal law, deportation, and the enforcement of laws against smuggling and unlawful immigration.



The state of the law has compelled legislatures to resort to indirect methods of reaching conduct which, in virtue of the doctrine, might lie beyond their direct power but which they deem it essential to control as part of their self-government.

39. It would not seem to be possible in the present state of the authorities to come to definite conclusions regarding the competence of Dominion Parliaments to give their legislation extra-territorial operation; and, in any case, uncertainty as to the existence and extent of the doctrine renders it desirable that legislation should be passed by the Parliament of the United Kingdom making it clear that this constitutional limitation does not exist.

### *Recommendations*

40. We are agreed that the most suitable method of placing the matter beyond possibility of doubt would be by means of a declaratory enactment in the terms set out below passed, with the consent of all the Dominions, by the Parliament of the United Kingdom.

41. With regard to the extent of the power so to be declared, we are of opinion that the recognition of the powers of a Dominion to legislate with extra-territorial effect should not be limited either by reference to any particular class of persons (e.g. the citizens of the Dominion) or by any reference to laws 'ancillary to provision for the peace, order and good government of the Dominion' (which is the phrase appearing in the terms of reference to the Conference).

42. We regard the first limitation as undesirable in principle. With respect to the second, we think that the introduction of a reference to legislation ancillary to peace, order and good government is unnecessary, would add to the existing confusion on the matter, and might diminish the scope of the powers the existence of which it is desired to recognize.

43. After careful consideration of possible alternatives, we recommend that the clause should be in the following form:

It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

44. In connexion with the exercise of extra-territorial legislative powers, we consider that provision should be made for the customary extra-territorial immunities with regard to internal discipline enjoyed by the armed forces of one Government when present in the territory of another Government with the consent of the latter. Such an arrangement would be of mutual advantage and common convenience to all parts of the Commonwealth, and we recommend that provision should be made by each member of the Commonwealth to give effect to such customary extra-territorial immunities within its territory as regards other members of the Commonwealth.

## PART V. Colonial Laws Validity Act

*Present Position*

45. The circumstances in which the Colonial Laws Validity Act, 1865, came to be enacted are so well known that only a brief reference to them is necessary in this Report.

46. From an early stage in the history of Colonial development the theory had been held that there was a common law rule that legislation by a Colonial Legislature was void if repugnant to the law of England. This rule was apparently based on the assumption that there were certain fundamental principles of English law which no Colonial law could violate, but the scope of these principles was by no means clearly defined.

47. A series of decisions, however, given by the Supreme Court of South Australia in the middle of the nineteenth century applied the rule so as to invalidate several of the Acts of the Legislature of that Colony. It was soon realized that, if this interpretation of the law were sound, responsible Government, then recently established by the release of the Australian Colonies from external political control, would to a great extent be rendered illusory by reason of legal limitations on the legislative power which were then for the first time seen to be far more extensive than had been supposed. The serious situation which thus developed in South Australia led to an examination of the whole question by the Law Officers of the Crown in England, whose opinion, while not affirming the extensive application of the doctrine of repugnancy upheld by the South Australian Court, found the test of repugnancy to be of so vague and general a kind as to leave great uncertainty in its application. They accordingly advised legislation to define the scope of the doctrine in new and precise terms. The Colonial Laws Validity Act, 1865, was enacted as the result of their advice.

48. The Act expressly conferred upon Colonial Legislatures the power of making laws even though repugnant to the English common law, but declared that a Colonial law repugnant to the provisions of an Act of the Parliament of the United Kingdom extending to the Colony either by express words or by necessary intendment should be void to the extent of such repugnancy. The Act also removed doubts which had arisen regarding the validity of laws assented to by the Governor of a Colony in a manner inconsistent with the terms of his Instructions.

49. The Act, at the time when it was passed, without doubt extended the then existing powers of Colonial legislatures. This has always been recognized, but it is no less true that definite restrictions of a far-reaching character upon the effective exercise of those powers were maintained and given statutory effect. In important fields of legislation actually covered by statutes extending to the Dominions

the restrictions upon legislative power have caused and continue to cause practical inconvenience by preventing the enactment of legislation adapted to their special needs. The restrictions in the past served a useful purpose in securing uniformity of law and co-operation on various matters of importance: but it follows from the Report of the Imperial Conference of 1926 that this method of securing uniformity, based as it was upon the supremacy of the Parliament of the United Kingdom, is no longer constitutionally appropriate in the case of the Dominions, and the next step is to bring the legal position into accord with the constitutional. Moreover, the interpretation of the Act has given rise to difficulties in practice, especially in Australia, because it is not always possible to be certain whether a particular Act does or does not extend by necessary intendment to a Dominion, and, if it does, whether all or any of the provisions of a particular Dominion law are or are not repugnant to it.

### *General Recommendations*

50. We have therefore proceeded on the basis that effect can only be given to the principles laid down in the Report of 1926 by repealing the Colonial Laws Validity Act, 1865, in its application to laws made by the Parliament of a Dominion, and the discussions at the Conference were mainly concerned with the manner in which this should be done. Our recommendation is that legislation be enacted declaring in terms that the Act should no longer apply to the laws passed by any Dominion.

51. We think it necessary, however, that there should also be a substantive enactment declaring the powers of the Parliament of a Dominion, lest a simple repeal of the Colonial Laws Validity Act might be held to have restored the old common law doctrine.

52. It may be stated in this connexion that, having regard to the nature of the relations between the several members of the British Commonwealth and the constitutional position of the Governor-General of a Dominion, it has not been considered necessary to make any express provision for the possibility, contemplated in Section 4 of the Colonial Laws Validity Act, of colonial laws assented to by the Governor being held void because of any instructions with reference to such laws or the subjects thereof contained in the Letters Patent or Instrument authorizing the Governor to assent to laws for the peace, order, and good government of the Colony.

53. We recommend that effect be given to the proposals in the foregoing paragraphs, by means of clauses in the following form:

(1) The Colonial Laws Validity Act, 1865, shall cease to apply to any law made by the Parliament of a Dominion.

(2) No law and no provision of any law hereafter made by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England or to the provisions of any existing or future

Act of Parliament or to any order, rule or regulation made thereunder, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation in so far as the same is part of the law of the Dominion.

54. With regard lastly to the problem which arises from the existence of a legal power in the Parliament of the United Kingdom to legislate for the Dominions, we consider that the appropriate method of reconciling the existence of this power with the established constitutional position is to place on record a statement embodying the conventional usage. We therefore recommend that a statement in the following terms should be placed on record in the proceedings of the next Imperial Conference—

It would be in accord with the established constitutional position of all members of the Commonwealth in relation to one another that no law hereafter made by the Parliament of the United Kingdom shall extend to any Dominion otherwise than at the request and with the consent of that Dominion.

We further recommend that this constitutional convention itself should appear as a formal recital or preamble in the proposed Act of the Parliament of the United Kingdom.

55. Practical considerations affecting both the drafting of Bills and the interpretation of Statutes make it desirable that this principle should also be expressed in the enacting part of the Act, and we accordingly recommend that the proposed Act should contain a declaration and enactment in the following terms:

Be it therefore declared and enacted that no Act of Parliament hereafter made shall extend or be deemed to extend to a Dominion unless it is expressly declared therein that that Dominion has requested and consented to the enactment thereof.

56. The association of constitutional conventions with law has long been familiar in the history of the British Commonwealth; it has been characteristic of political development both in the domestic government of these communities and in their relations with each other; it has permeated both executive and legislative power. It has provided a means of harmonizing relations where a purely legal solution of practical problems was impossible, would have impaired free development, or would have failed to catch the spirit which gives life to institutions. Such conventions take their place among the constitutional principles and doctrines which are in practice regarded as binding and sacred whatever the powers of Parliament may in theory be.

57. If the above recommendations are adopted, the acquisition by the Parliaments of the Dominions of full legislative powers will follow as a necessary consequence. We then proceeded to consider whether in these circumstances special provision ought to be made with regard

to certain subjects. These seemed to us to fall into two categories, namely, those in which uniform or reciprocal action may be necessary or desirable for the purpose of facilitating free co-operation among the members of the British Commonwealth in matters of common concern, and those in which peculiar and in some cases temporary conditions in some of the Dominions call for special treatment.

58. By the removal of all such restrictions upon the legislative powers of the Parliaments of the Dominions and the consequent effective recognition of the equality of these Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free association of the members of the British Commonwealth of Nations.

59. As, however, these freely associated members are united by a common allegiance to the Crown, it is clear that the laws relating to the succession to the Throne and the Royal Style and Titles are matters of equal concern to all.

60. We think that appropriate recognition would be given to this position by means of a convention similar to that which has in recent years controlled the theoretically unfettered powers of the Parliament of the United Kingdom to legislate upon these matters. Such a constitutional convention would be in accord with and would not derogate from and is not intended in any way to derogate from the principles stated by the Imperial Conference of 1926 as underlying the position and mutual relations of the members of the British Commonwealth of Nations. We therefore recommend that this convention should be formally put on record in the following terms:

Inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

61. We recommend that the statement of principles set out in the three preceding paragraphs be placed on record in the proceedings of the next Imperial Conference, and that the constitutional convention itself in the form which we have suggested should appear as a formal recital or preamble in the proposed Act to be passed by the Parliament of the United Kingdom.

62. The second subject which we considered concerns the effect of the acquisition of full legislative powers by the Parliaments of the Dominions possessing federal Constitutions.

63. Canada alone among the Dominions has at present no power to amend its Constitution Act without legislation by the Parliament of the United Kingdom. The fact that no specific provision was made

for effecting desired amendments wholly by Canadian agencies is easily understood, apart from the special conditions existing in Canada at that time, when it is recalled that the British North America Act, 1867, was the first Dominion federation measure and was passed over sixty years ago, at an early stage of development. It was pointed out that the question of alternative methods of amendment was a matter for future consideration by the appropriate Canadian authorities and that it was desirable therefore to make it clear that the proposed Act of the Parliament of the United Kingdom would effect no change in this respect. It was also pointed out that for a similar reason an express declaration was desirable that nothing in the Act should authorize the Parliament of Canada to make laws on any matter at present within the authority of the Provinces, not being a matter within the authority of the Dominion.

64. The Commonwealth of Australia was established under, and its Constitution is contained in an Act of Parliament of the United Kingdom, the Commonwealth of Australia Constitution Act, 1900. The authority of the Constitution, with its distribution of powers between Commonwealth and States, originated in the first instance from the supremacy of Imperial legislation; and it was pointed out that the continued authority of the Constitution is essential to the maintenance of the federal system. The Constitution of the Commonwealth, though paramount law for the Parliament of the Commonwealth, is subject to alteration by the joint action of Parliament and the Electorate. To that extent the Commonwealth need not have recourse to any authority external to itself for alterations of its instrument of government. But 'the Constitution', though the main part, is not the whole of the Commonwealth of Australia Constitution Act; and the eight sections of that which precede the section containing 'the Constitution' can be altered only by an Act of the Parliament of the United Kingdom. It will be for the proper authorities in Australia in due course to consider whether they desire this position to remain and, if not, how they propose to provide for the matter.

65. The Constitution of New Zealand is to a very considerable extent alterable by the Parliament of New Zealand; but the powers of alteration conferred by the Constitution are subject to certain qualifications, and it is apparently a matter of doubt whether these qualifications have been removed by Section 5 of the Colonial Laws Validity Act. It appears to us that any recommendations in relation to the Constitution of the Dominion of Canada and the Commonwealth of Australia should also be applied to New Zealand; and it will then be for the appropriate authorities in New Zealand to consider whether, and, if so, in what form, the full power of alteration should be given.

66. We are accordingly of opinion that the inclusion is required in the proposed Act of the Parliament of the United Kingdom of express

provisions dealing with the matters discussed in the three preceding paragraphs, and we have prepared the following clauses:

(1) Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution Acts of the Dominion of Canada, the Commonwealth of Australia, and the Dominion of New Zealand, otherwise than in accordance with the law and constitutional usage and practice heretofore existing.

(2) Nothing in this Act shall be deemed to authorize the Parliaments of the Dominion of Canada and the Commonwealth of Australia to make laws on any matter at present within the authority of the Provinces of Canada or the States of Australia, as the case may be, not being a matter within the authority of the Parliaments or Governments of the Dominion of Canada and of the Commonwealth of Australia respectively.

67. Similar considerations do not arise in connexion with the Constitutions of the Union of South Africa and the Irish Free State. The Constitutions of both countries are framed on the unitary principle. Both include complete legal powers of constitutional amendment. In the case of the Union of South Africa the exercise of these powers is conditioned only by the provisions of section 152 of the South Africa Act, 1909. In the case of the Irish Free State they are exercised in accordance with the obligations undertaken by the Articles of Agreement for a Treaty signed at London on the 6th day of December, 1921.

68. The Report of 1926 dealt only with the constitutional position of the Governments and Parliaments of the Dominions. In recommending the setting up of the present Conference it did not make any specific mention of the special problems presented by federal Constitutions, and accordingly the present Conference has not been called on to consider any matters relating to the legislative powers of the Provincial Legislatures in Canada or the State Legislatures in Australia. The federal character of the Constitutions of Canada and Australia, however, gives rise to questions which we have not found it possible to leave out of account, inasmuch as they concern self-government in those Dominions.

69. The Constitution of Australia presents a special problem in respect to extra-territorial legislative power. The most urgently required field of extra-territorial power is criminal law, which, in general, is within the State power in Australia. In Australia the Parliaments of the States are not subject to any specific territorial restrictions; they differ from the Commonwealth Parliament only in this, that their laws have not the extended operation specifically given to the laws of the Commonwealth Parliament by Section 5 of the Commonwealth of Australia Constitution Act, and that the Commonwealth Parliament has power over certain specific matters which look beyond the territory of the Commonwealth. The question whether the power of enacting extra-territorial laws over matters within its

sphere, to be enjoyed by the Commonwealth Parliament in common with the Parliaments of other Dominions, should be granted also to State Parliaments is a matter primarily for consideration by the proper authorities in Australia.

70. The Australian Constitution also presents special problems in relation to disallowance and reservation. In Australia there is direct contact between the States and His Majesty's Government in the United Kingdom in respect of disallowance and reservation of State legislation. This position will not be affected by the report of the present Conference.

71. The question of the effect of repugnance of Provincial or State legislation to Acts of the Parliament of the United Kingdom presents the same problems in Canada and in Australia. The recommendations which we have made with regard to the Colonial Laws Validity Act do not deal with the problems of Provincial or State legislation. In the absence of special provision, Provincial and State legislation will continue to be subject to the Colonial Laws Validity Act and to the legislative supremacy of the Parliament of the United Kingdom, and it will be a matter for the proper authorities in Canada and in Australia to consider whether and to what extent it is desired that the principles to be embodied in the new Act of the Parliament of the United Kingdom should be applied to Provincial and State legislation in the future.

72. We pass now to the subject of nationality, which is clearly a matter of equal interest to all parts of the Commonwealth.

73. Nationality is a term with varying connotations. In one sense it is used to indicate a common consciousness based upon race, language, traditions, or other analogous ties and interests and is not necessarily limited to the geographic bounds of any particular State. Nationality in this sense has long existed in the older parent communities of the Commonwealth. In another and more technical sense it implies a definite connexion with a definite State and Government. The use of the term in the latter sense has in the case of the British Commonwealth been attended by some ambiguity, due in part to its use for the purpose of denoting also the concept of allegiance to the Sovereign. With the constitutional development of the communities now forming the British Commonwealth of Nations the terms 'national', 'nationhood', and 'nationality', in connexion with each member, have come into common use.

74. The status of the Dominions in international relations, the fact that the King, on the advice of his several Governments, assumes obligations and acquires rights by treaty on behalf of individual members of the Commonwealth, and the position of the members of the Commonwealth in the League of Nations, and in relation to the Permanent Court of International Justice, do not merely involve the recognition of these communities as distinct juristic entities, but also



compel recognition of a particular status of membership of those communities for legal and political purposes. These exigencies have already become apparent; and two of the Dominions have passed Acts defining their 'nationals' both for national and for international purposes.

75. The members of the Commonwealth are united by a common allegiance to the Crown. This allegiance is the basis of the common status possessed by all subjects of His Majesty.

76. A common status directly recognized throughout the British Commonwealth in recent years has been given a statutory basis through the operation of the British Nationality and Status of Aliens Act, 1914.

77. Under the new position, if any change is made in the requirements established by the existing legislation, reciprocal action will be necessary to attain this same recognition the importance of which is manifest in view of the desirability of facilitating freedom of intercourse and the mutual granting of privileges among the different parts of the Commonwealth.

78. It is of course plain that no member of the Commonwealth either could or would contemplate seeking to confer on any person a status to be operative throughout the Commonwealth save in pursuance of legislation based upon common agreement, and it is fully recognized that this common status is in no way inconsistent with the recognition within and without the Commonwealth of the distinct nationality possessed by the nationals of the individual states of the British Commonwealth.

79. But the practical working out and application of the above principles will not be an easy task nor is it one which we can attempt to enter upon in this report. We recommend, however, that steps should be taken as soon as possible by consultation among the various Governments to arrive at a settlement of the problems involved on the basis of these principles.

80. There are a number of subjects in which uniformity has hitherto been secured through the medium of Acts of the Parliament of the United Kingdom of general application. Where uniformity is desirable on the ground of common concern or practical convenience we think that this end should in the future be sought by means of concurrent or reciprocal action based upon agreement. We recommend that uniformity of the law of prize and co-ordination of prize jurisdiction should agreeably with the above principle be maintained. With regard to such subjects as fugitive offenders, foreign enlistment and extradition in certain of its aspects, we recommend that before any alteration is made in the existing law there should be prior consultation and, so far as possible, agreement.

81. Our attention has been drawn to the definition of the word 'Colony' in Section 18 of the Interpretation Act, 1889, and we suggest

that the opportunity should be taken of the proposed Act to be passed by the Parliament of the United Kingdom to amend this definition. We have accordingly prepared the following clause:

In this Act and in every Act passed after the commencement of this Act the expression 'Dominion' means the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, and the Irish Free State or any of them, and the expression 'Colony' shall, notwithstanding anything in the Interpretation Act, 1889, not include a Dominion or any Province or State forming part of a Dominion.

82. In making the recommendations contained in this part of our report, we have proceeded on the assumption that the necessary legislation and the constitutional conventions to which we have referred will in due course receive the approval of the Parliaments of the Dominions concerned.

## PART VI. Merchant Shipping Legislation and Colonial Courts of Admiralty Act, 1890

### (1) *Merchant Shipping Legislation*

#### *Present Position.*

83. The general position is that the Dominions are empowered by their Constitutions to enact laws relating to merchant shipping subject to varying limitations. For instance, in the constitutions of Canada and Australia 'Navigation and Shipping' is expressly mentioned as one of the matters in respect of which their Parliaments may legislate, but under legislation extending to the Dominions, or to the territories which now constitute the Dominions, which was enacted by the Parliament of the United Kingdom before 1911, and which is still the controlling legislation in respect of merchant shipping, the legislatures of the Dominions are treated as subordinate legislatures. The reason for this is not difficult to understand when it is explained that the Merchant Shipping Act, 1854, which was made for the situation existing at that date, is substantially the legislation which continues to be applicable to the Dominions. The Merchant Shipping Act, 1894, which with its amendments is now the governing Act, was merely a re-enactment of the 1854 Act, with the insertion of amendments made during the intervening years. In the year 1854 none of the Dominions as such was in existence, and it is obvious that legislation cast in a form appropriate to the constitutional status of the British possessions over half a century ago must be inconsistent with the facts and constitutional relationships obtaining in the British Commonwealth of Nations as that system exists to-day.

84. Since the year 1911 the practice has been established that enactments of the Parliament of the United Kingdom in relation to merchant shipping and navigation have not been made applicable to the Dominions. In general, all shipping legislation passed by the

Parliament of the United Kingdom since that date has been so framed as not to extend to the Dominions.

85. In view of the continued growth of the Dominions, it was inevitable that there should be doubts and difficulties as to the extent of the powers of the Dominions with respect to merchant shipping legislation, and this occasioned differences of opinion from time to time. The decisions of the courts, however, indicate in some of the Dominions that, because of the operation in those Dominions of the Colonial Laws Validity Act, 1865, the legal position is that statutes in respect of merchant shipping passed by the Parliament of the United Kingdom, both before and after the date of the respective constitutions, override any repugnant legislation passed by a Dominion Parliament. In the Commonwealth of Australia the Act of the Parliament of the United Kingdom in relation to shipping has been construed by the High Court of Australia as intending to deal with the subject of merchant shipping as a single integer, subject only to specific exceptions, so that repugnancy in legislation of the Parliament of the Commonwealth of Australia to that central and commanding intention is repugnancy to the Act of the Parliament of the United Kingdom.

. . . . .

### *The New Position.*

91. Our general conclusions on the Operation of Dominion Legislation, including the recommendations regarding extra-territorial effect of Dominion laws, the Colonial Laws Validity Act, 1865, reservation and disallowance, are applicable to the constitutional position of legislation affecting merchant shipping.

92. When these conclusions are given effect to, and the restrictions imposed on Dominion Parliaments by Sections 735 and 736 of the Merchant Shipping Act, 1894, are removed by the Parliament of the United Kingdom, which we recommend should be done, there will no longer be any doubt as to the full and complete power of any Dominion Parliament to enact legislation in respect of merchant shipping, nor will Dominion laws be liable to be held inoperative on the ground of repugnancy to laws passed by the Parliament of the United Kingdom.

93. The new position will be that each Dominion will, amongst its other powers, have full and complete legislative authority over all ships while within its territorial waters or engaged in its coasting trade; and also over its own registered ships both intra-territorially and extra-territorially. Such extra-territorial legislation will, of course, operate subject to local laws while the ship is within another jurisdiction.

94. The ground is thus cleared for co-operation amongst the members of the British Commonwealth of Nations on an equal basis

in those matters in which practical considerations call for concerted action. This concerted action may take the form of agreements, for a term of years, as to the uniformity of laws throughout the British Commonwealth of Nations; as to the reciprocal aid in the enforcement of laws in jurisdictions within the British Commonwealth outside the territory of the enacting Parliament; and as to any limitations to be observed in the exercise of legislative powers.

### *Recommendations.*

95. As shipping is a world-wide interest, in which uniformity is from the nature of the case desirable, there is a strong presumption in favour of concerted action between the members of the British Commonwealth in shipping matters, but this concerted action must from its nature result from voluntary agreements by the members of the Commonwealth; it should be confined to matters in which concerted action is necessary or desirable in the common interest; it should be sufficiently elastic to permit of alterations being made from time to time as experience is gained; and it must not prevent local matters being dealt with in accordance with local conditions. The kind of agreement which we have in mind in making our recommendations is one extending over a fixed period of years and providing for revision from time to time.

96. It would be difficult, and is not necessary, at the present stage to frame a complete list of the shipping questions on which uniformity is desirable, but certain matters stand out clearly and we submit the following recommendations with regard to them.

. . . . .

### *(2) Colonial Courts of Admiralty Act, 1890*

110. At the present time, Admiralty Courts in all the Dominions, except in the Irish Free State, are constituted under the provisions of the Colonial Courts of Admiralty Act, 1890, passed by the Parliament of the United Kingdom. In the Irish Free State, Admiralty laws are administered under the provisions of the Courts of Admiralty (Ireland) Act, 1867, and accordingly different considerations apply there.

111. Prior to the enactment of the Colonial Courts of Admiralty Act, 1890, Admiralty law was administered in the Dominions or in the territories now forming the Dominions, other than Ireland, in Vice-Admiralty Courts which were established in the early days under the authority of the Admiralty, and in later years under the authority of enactments passed by the Parliament of the United Kingdom. The Colonial Courts of Admiralty Act, 1890, which repealed all previous enactments in relation to Vice-Admiralty Courts, provided that every court of law in a British possession, which is for the time being declared in pursuance of that Act to be a Court of Admiralty, or

which, if no such declaration is in force in the possession, has therein original unlimited civil jurisdiction, shall be a Court of Admiralty and that the jurisdiction of such Colonial Court of Admiralty should, subject to the provisions of the Act, be the same as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute, or otherwise. The Act also provided that any Colonial law 'shall not confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty'. Apparently the intention was that the provisions of the Act should cover the whole field of Admiralty jurisdiction to the exclusion of any legislation by a Dominion. Rules for regulating the procedure and practice in the Court were authorized to be made by a Colonial Court of Admiralty, but such rules should not come into operation until approved by His Majesty in Council. Any Colonial law made in pursuance of the Act, which affects the jurisdiction of, or practice or procedure in the Courts, in respect of the jurisdiction conferred by the Act, must, unless previously approved by His Majesty through a Secretary of State, either be reserved for the signification of His Majesty's pleasure thereon or contain a suspending clause providing that such law shall not come into operation until His Majesty's pleasure thereon has been publicly signified in the Dominion in which it is passed.

112. Under a recent decision of the Judicial Committee of the Privy Council, it was held that the jurisdiction of an Admiralty Court established under the Act does not march with the Admiralty jurisdiction of the High Court in England but was fixed by the Admiralty jurisdiction of the High Court as it existed when the Act was passed in 1890.

113. Since the year 1890, important additions have been made to the Admiralty jurisdiction of the High Court in England and this jurisdiction has not been added to the Courts of Admiralty in the Dominions. The jurisdiction is, therefore, not uniform at the present time throughout the United Kingdom and the Dominions. Doubts have been expressed as to whether a Dominion, in which the Act is in force, has legislative authority to increase the jurisdiction of Admiralty Courts in such Dominion or whether this must be done by an Act of the Parliament of the United Kingdom.

114. The existing situation of control in the United Kingdom of Admiralty Courts in the Dominions is not in accord with the present constitutional status of the Dominions, and should be remedied.

115. Our recommendation is that each Dominion in which the Colonial Courts of Admiralty Act, 1890, is in force should have power to repeal that Act.

116. Our general conclusions on the operation of the Colonial Laws Validity Act, 1865, and reservation and disallowance are applicable to the Colonial Courts of Admiralty Act, 1890. As soon as the legislation necessary to give effect to these recommendations is passed, each

Dominion will be free to repeal if and when desired the Colonial Courts of Admiralty Act, 1890, in so far as that Act relates to that Dominion, and may then establish Admiralty Courts under its own laws.

117. We think it highly desirable to emphasize that so far as is possible there should be uniform jurisdiction and procedure in all Admiralty Courts in the British Commonwealth of Nations subject, of course, to such variations as may be required in matters of purely local or domestic interest.

123. . . . We recommend that a clause in the following terms should be inserted after the above-mentioned general clauses in the Act to be passed by the Parliament of the United Kingdom:

Without prejudice to the generality of the foregoing provisions of this Act—

(1) Sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

(2) Section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of Section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

#### (4) *India*

124. Subject to certain special provisions of the Merchant Shipping Acts, the legislative powers of the Indian Legislature are governed by the Government of India Act, and general statements regarding the position of the Dominions in matters of merchant shipping and Admiralty Court legislation may therefore not be entirely applicable in the case of India. At the same time, as the position of India in these matters has always been to all intents and purposes identical with that of the Dominions, it is not anticipated that there would be any serious difficulty in applying the principles of our recommendations to India, and we suggest that the question of the proper method of so doing should be considered by His Majesty's Government in the United Kingdom and the Government of India.

### PART VII. Suggested Tribunal for the Determination of Disputes

125. We felt that our work would not be complete unless we gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth. We were impressed with the advantages

which might accrue from the establishment of such a tribunal. It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard first to the constitution of such a tribunal, and, secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an *ad hoc* body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between governments. We recommend that the whole subject should be further examined by all the governments.

D. *THE IMPERIAL CONFERENCE, 1930*

REPORT OF THE IMPERIAL CONFERENCE, 1930

(Summary of Proceedings, pp. 14-41)

The opening and closing Plenary Meetings of the Conference were held in the Reception Room of the Foreign Office. In order to economize the time of delegates, however, the general direction of the work of the Conference was conducted at meetings of the Heads of Delegations held at No. 10 Downing Street, and in the room of the Prime Minister of the United Kingdom at the House of Commons. These meetings were normally attended by the Prime Ministers of the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa, and Newfoundland, the Minister for External Affairs of the Irish Free State, and the Secretary of State for India as Head of the Indian Delegation, accompanied by other Delegates and Advisers according to the nature of the subjects under discussion.

On the motion of the Prime Minister of Canada, seconded by the Prime Minister of the Commonwealth of Australia, the Prime Minister of the United Kingdom was asked to take the Chair at the meetings of the Conference and of the Heads of Delegations. In his absence the Chair was usually taken by one of the Dominion Prime Ministers.

Committees and Sub-Committees were appointed both by the full Conference and by the Heads of Delegations.

In former Imperial Conferences it has been the usual practice to devote some time to general statements and discussion on such matters as foreign affairs, defence and questions relating to Colonies, Protectorates and Mandated Territories; on the present occasion, having regard to the large number of specific subjects relating to Inter-Imperial Relations and Economic Questions arising on the Agenda and the time required for their discussion, it was thought desirable to replace this procedure by the circulation of general

memoranda, from which particular questions were selected as subjects for consultation.

The total number of meetings was: Plenary Conference, 3; Heads of Delegations, 28; Committees and Sub-Committees, 163.

## VI. Inter-Imperial Relations

It was found convenient, after preliminary discussion by the Heads of Delegations on the various points involved, to refer many of the questions on the Agenda affecting Inter-Imperial Relations to a Committee under the chairmanship of The Right Honourable Lord Sankey, G.B.E., Lord Chancellor. This Committee did most valuable work in exploring the various issues and the following section is based largely on its work. Lord Sankey's Committee was, in turn, aided by special Sub-Committees that were set up to deal with particular aspects of the questions involved and by a drafting Sub-Committee under the chairmanship of Sir Robert Garran, K.C.M.G., Solicitor-General, Commonwealth of Australia.

### *(a) Report of the Conference of 1929 on the Operation of Dominion Legislation*

The Imperial Conference examined the various questions arising with regard to the Report of the Conference on the Operation of Dominion Legislation and in particular took into consideration the difficulties which were explained by the Prime Minister of Canada regarding the representations which had been received by him from the Canadian Provinces in relation to that Report.

A special question arose in respect to the application to Canada of the sections of the Statute proposed to be passed by the Parliament at Westminster (which it was thought might conveniently be called the Statute of Westminster), relating to the Colonial Laws Validity Act and other matters. On the one hand it appeared that approval had been given to the Report of the Conference on the Operation of Dominion Legislation by resolution of the House of Commons of Canada, and accordingly, that the Canadian representatives felt themselves bound not to take any action which might properly be construed as a departure from the spirit of that resolution. On the other hand, it appeared that representations had been received from certain of the Provinces of Canada subsequent to the passing of the Resolution, protesting against action on the Report until an opportunity had been given to the Provinces to determine whether their rights would be adversely affected by such action.

Accordingly, it appeared necessary to provide for two things. In the first place it was necessary to provide an opportunity for His Majesty's Government in Canada to take such action as might be



appropriate to enable the Provinces to present their views. In the second place it was necessary to provide for the extension of the sections of the proposed Statute to Canada or for the exclusion of Canada from their operation after the Provinces had been consulted. To this end it seemed desirable to place on record the view that the sections of the Statute relating to the Colonial Laws Validity Act should be so drafted as not to extend to Canada unless the Statute was enacted in response to such requests as are appropriate to an amendment of the British North America Act. It also seemed desirable to place on record the view that the sections should not subsequently be extended to Canada except by an Act of the Parliament of the United Kingdom enacted in response to such requests as are appropriate to an amendment of the British North America Act.

The Conference on the Operation of Dominion Legislation in 1929, recommended a draft clause for inclusion in the Statute proposed to be passed by the Parliament at Westminster to the following effect:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

At the present Conference the delegates of His Majesty's Government in the United Kingdom were apprehensive lest a clause in this form should have the effect of preventing an Act of the United Kingdom Parliament passed hereafter from having the operation which the legislation of one State normally has in relation to the territory of another. To obviate this, the following amendment was proposed:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion *as part of the law in force in that Dominion*, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

The delegates from some of the Dominions were apprehensive lest the acceptance of the above amendment might imply the recognition of a right of the Parliament of the United Kingdom to legislate in relation to a Dominion (otherwise than at the request and with the consent of the Dominion) in a manner which, if the legislation had been enacted in relation to a foreign state, would be inconsistent with the principles of international comity. It was agreed that the clause as amended did not imply, and was not to be construed as implying, the recognition of any such right, and, on the proposal of the United Kingdom Delegates, that a statement to this effect should be placed on record.

The Conference passed the following Resolutions:

(i) The Conference approves the Report of the Conference on the Operation of Dominion Legislation (which is to be regarded as form-

ing part of the Report of the present Conference), subject to the conclusions embodied in this Section.

(ii) The Conference recommends:

- (a) that the Statute proposed to be passed by the Parliament at Westminster should contain the provisions set out in the Schedule annexed.
- (b) that the 1st December, 1931, should be the date as from which the proposed Statute should become operative.
- (c) that with a view to the realization of this arrangement, Resolutions passed by both Houses of the Dominion Parliaments should be forwarded to the United Kingdom, if possible by 1st July, 1931, and, in any case, not later than the 1st August, 1931, with a view to the enactment by the Parliament of the United Kingdom of legislation on the lines set out in the schedule annexed.
- (d) that the Statute should contain such further provisions as to its application to any particular Dominion as are requested by that Dominion.

#### SCHEDULE

##### CLAUSES IN PROPOSED LEGISLATION

1. In accordance with the recommendation in paragraph 43 of the Report of the Conference on the Operation of Dominion Legislation, a clause as follows:

It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

2. In accordance with the recommendation in paragraph 53 a clause as follows:

(1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule or regulation, in so far as the same is part of the law of the Dominion.

3. In accordance with the recommendation in paragraph 55 a clause as follows:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend to a Dominion as part of the law in force in that Dominion unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

4. In accordance with the recommendations in paragraph 66 clauses as follows:

Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

*Note.*—In view of the doubts that have arisen concerning the interpretation of the draft section in paragraph 66 in its application to the Canadian Constitution the words ‘Dominion of Canada’ and ‘Provinces’ have been deleted. It is intended that a section dealing exclusively with the Canadian position will be inserted after the representations of the Provinces have received consideration.

5. In accordance with the recommendation in paragraph 81 a clause as follows:

Notwithstanding anything in the Interpretation Act, 1889, the expression ‘Colony’ shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

6. In accordance with the recommendations in paragraph 123 clauses as follows:

Without prejudice to the generality of the foregoing provisions of this Act sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

Without prejudice to the generality of the foregoing provisions of this Act section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty’s pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7. A clause to deal with the position of New Zealand as follows:

No provision of this Act shall extend to the Dominion of New Zealand as part of the law thereof unless that provision is adopted by the Parliament of that Dominion, and any Act of the said Parliament adopting any provision of this Act may provide that the adoption shall have effect either as from the commencement of this Act or as from such later date as may be specified by the adopting Act.

## CERTAIN RECITALS IN PROPOSED LEGISLATION

1. In accordance with the recommendation of paragraph 54, a recital as follows:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the Dominions as part of the law in force in that Dominion otherwise than at the request and with the consent of that Dominion.

2. In accordance with the recommendation in paragraph 60, a recital as follows:

And whereas it is meet and proper to set out by way of preamble to this Act, that inasmuch as the Crown is the symbol of the free association of the Members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position of all the Members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom.

*(b) Nationality*

The conclusions of the conference were as follows:

- (1) That the Conference affirms paragraphs 73 to 78 inclusive of the Report of the Conference on the Operation of Dominion Legislation.
- (2) That, if any changes are desired in the existing requirements for the common status, provision should be made for the maintenance of the common status, and the changes should only be introduced (in accordance with present practice) after consultation and agreement among the several Members of the Commonwealth.
- (3) That it is for each Member of the Commonwealth to define for itself its own nationals, but that, so far as possible, those nationals should be persons possessing the common status, though it is recognized that local conditions or other special circumstances may from time to time necessitate divergences from this general principle.
- (4) That the possession of the common status in virtue of the law for the time being in force in any part of the Commonwealth should carry with it the recognition of that status by the law of every other part of the Commonwealth.

*(c) Nationality of Married Women*

Careful consideration was given to the subject of the nationality of married women. All the Members of the Commonwealth represented at The Hague Conference of 1930 signed the Nationality

Convention there concluded, and will, it is assumed, introduce such legislation as may be necessary to give effect to Articles 8-10 of that Convention.<sup>1</sup> The Conference was satisfied, however, that any proposals for the further modification of the principle of the existing law would fail to secure unanimous agreement. It followed that the Conference was unable to make any recommendation for the substantive amendment of the law on this subject except to the extent stated above.

(d) *Commonwealth Tribunal*

The Report of the Conference on the Operation of Dominion Legislation contains the following paragraph (paragraph 125):

We felt that our work would not be complete unless we gave some consideration to the question of the establishment of a tribunal as a means of determining differences and disputes between members of the British Commonwealth. We were impressed with the advantages which might accrue from the establishment of such a tribunal. It was clearly impossible in the time at our disposal to do more than collate various suggestions with regard first to the constitution of such a tribunal, and secondly, to the jurisdiction which it might exercise. With regard to the former, the prevailing view was that any such tribunal should take the form of an *ad hoc* body selected from standing panels nominated by the several members of the British Commonwealth. With regard to the latter, there was general agreement that the jurisdiction should be limited to justiciable issues arising between governments. We recommend that the whole subject should be further examined by all the governments.

This matter was examined by the Conference and they found themselves able to make certain definite recommendations with regard to it.

Some machinery for the solution of disputes which may arise between the Members of the British Commonwealth is desirable. Different methods for providing this machinery were explored and it was agreed, in order to avoid too much rigidity, not to recommend the constitution of a permanent court, but to seek a solution along the line of *ad hoc* arbitration proceedings. The Conference thought that this method might be more fruitful than any other in securing the confidence of the Commonwealth.

The next question considered was whether arbitration proceedings

<sup>1</sup> The text of these Articles is as follows:

*Article 8.*

If the national law of the wife causes her to lose her nationality on marriage with a foreigner, this consequence shall be conditional on her acquiring the nationality of the husband.

*Article 9.*

If the national law of the wife causes her to lose her nationality upon a change in the nationality of her husband occurring during marriage, this consequence shall be conditional on her acquiring her husband's new nationality.

*Article 10.*

Naturalization of the husband during marriage shall not involve a change in the nationality of the wife except with her consent.

should be voluntary or obligatory, in the sense that one party would be under an obligation to submit thereto if the other party wished it. In the absence of general consent to an obligatory system it was decided to recommend the adoption of a voluntary system.

It was agreed that it was advisable to go further, and to make recommendations as to the competence and the composition of an arbitral tribunal, in order to facilitate resort to it, by providing for the machinery whereby a tribunal could, in any given case, be brought into existence.

As to the competence of the tribunal, no doubt was entertained that this should be limited to differences between governments. The Conference was also of opinion that the differences should only be such as are justiciable.

As to the composition of the tribunal it was agreed:

(1) The Tribunal shall be constituted *ad hoc* in the case of each dispute to be settled.

(2) There shall be five members, one being the Chairman; neither the Chairman nor the members of the Tribunal shall be drawn from outside the British Commonwealth of Nations.

(3) The members, other than the Chairman, shall be selected as follows:

(a) One by each party to the dispute from States Members of the Commonwealth other than the parties to the dispute, being persons who hold or have held high judicial office or are distinguished jurists and whose names will carry weight throughout the Commonwealth.

(b) One by each party to the dispute from any part of the Commonwealth, with complete freedom of choice.

(4) The members so chosen by each party shall select another person as Chairman of the Tribunal as to whom they shall have complete freedom of choice.

(5) If the parties to the dispute so desire, the Tribunal shall be assisted by the admission as assessors of persons with special knowledge and experience in regard to the case to be brought before the Tribunal.

It was thought that the expenses of the tribunal itself in any given case should be borne equally by the parties, but that each party should bear the expense of presenting its own case.

It was felt that details as to which agreement might be necessary might be left for arrangement by the governments concerned.

#### (e) *Merchant Shipping*

The Report of the Conference of 1929 dealt at considerable length (paragraphs 83 to 109) with Merchant Shipping legislation and the following paragraphs of that Report should be referred to here:

(Here follow paragraphs 93 to 96 of the Report of the Conference.)

A draft of an agreement covering these points was this year prepared in the United Kingdom and circulated to the Dominions. The Conference examined this draft agreement very closely and came to the conclusion that, with certain alterations, it meets fully and satisfactorily the objects which Part VI of the 1929 Report had in view. The draft agreement as altered is shown in the Annex to Section VI.

The draft contains, in the form of an agreement which is flexible but as precise as the subject-matter will allow, a statement of the matters in which, after examination in two successive years by representatives of the Governments concerned, it is considered that concerted action on a voluntary basis between the parts of the Commonwealth is essential in the common interest, together with the broad principles which should be followed in dealing with those matters. The Conference recommended that the agreement be made.

The agreement presupposes that the legislation contemplated by the 1929 Report has been passed, and that it should come into operation at the same time as that legislation.

Canada reserves the right when signing the agreement to declare the extent, if any, to which the provisions of the agreement, other than those of Part I, shall not apply to ships navigating the Great Lakes of North America.

#### (g) *Appointment of Governors-General*

The Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 declared that the Governor-General of a Dominion is now the 'representative of the Crown, holding in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty the King in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any Department of that Government'.

The Report did not, however, contain any recommendation as to the procedure to be adopted henceforward in the appointment of a Governor-General, and the Conference felt it necessary to give some consideration to this question.

Having considered the question of the procedure to be observed in the appointment of a Governor-General of a Dominion in the light of the alteration in his position resulting from the Resolutions of the Imperial Conference of 1926, the Conference came to the conclusion that the following statements in regard thereto would seem to flow naturally from the new position of the Governor-General as representative of His Majesty only.

1. The parties interested in the appointment of a Governor-

General of a Dominion are His Majesty the King, whose representative he is, and the Dominion concerned.

2. The constitutional practice that His Majesty acts on the advice of responsible Ministers applies also in this instance.
3. The Ministers who tender and are responsible for such advice are His Majesty's Ministers in the Dominion concerned.
4. The Ministers concerned tender their formal advice after informal consultation with His Majesty.
5. The channel of communication between His Majesty and the Government of any Dominion is a matter solely concerning His Majesty and such Government. His Majesty's Government in the United Kingdom have expressed their willingness to continue to act in relation to any of His Majesty's Governments in any manner in which that Government may desire.
6. The manner in which the instrument containing the Governor-General's appointment should reflect the principles set forth above is a matter in regard to which His Majesty is advised by His Ministers in the Dominion concerned.

*(h) The System of Communication and Consultation in Relation to Foreign Affairs*

Previous Imperial Conferences have made a number of recommendations with regard to the communication of information and the system of consultation in relation to treaty negotiations and the conduct of foreign affairs generally. The main points can be summarized as follows:

- (1) Any of His Majesty's Governments conducting negotiations should inform the other Governments of His Majesty in case they should be interested and give them the opportunity of expressing their views, if they think that their interests may be affected.
- (2) Any of His Majesty's Governments on receiving such information should, if it desires to express any views, do so with reasonable promptitude.
- (3) None of His Majesty's Governments can take any steps which might involve the other Governments of His Majesty in any active obligations without their definite assent.

The Conference desired to emphasize the importance of ensuring the effective operation of these arrangements. As regards the first two points, they made the following observations:

(i) The first point, namely, that of informing other Governments of negotiations, is of special importance in relation to treaty negotiations in order that any Government which feels that it is likely to be interested in negotiations conducted by another Government may have the earliest possible opportunity of expressing its views. The application of this is not, however, confined to treaty negotiations.



It cannot be doubted that the fullest possible interchange of information between His Majesty's Governments in relation to all aspects of foreign affairs is of the greatest value to all the Governments concerned.

In considering this aspect of the matter, the Conference have taken note of the development since the Imperial Conference of 1926 of the system of appointment of diplomatic representatives of His Majesty representing in foreign countries the interests of different Members of the British Commonwealth. They feel that such appointments furnish a most valuable opportunity for the interchange of information, not only between the representatives themselves but also between the respective Governments.

Attention is also drawn to the resolution quoted in Section VI of the Report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926, with regard to the development of a system to supplement the present system of intercommunication through the official channel with reference not only to foreign affairs but to all matters of common concern. The Conference have heard with interest the account which was given of the liaison system adopted by His Majesty's Government in the Commonwealth of Australia, and recognized its value. Their attention has also been called to the action taken by His Majesty's Government in the United Kingdom in the appointment of representatives in Canada and the Union of South Africa. They are impressed with the desirability of continuing to develop the system of personal contact between His Majesty's Governments, though, of course, they recognize that the precise arrangements to be adopted for securing this development are matters for the consideration of the individual Governments with a view to securing a system which shall be appropriate to the particular circumstances of each Government.

(ii) As regards the second point, namely, that any of His Majesty's Governments desiring to express any views should express them with reasonable promptitude, it is clear that a negotiating Government cannot fail to be embarrassed in the conduct of negotiations if the observations of other Governments who consider that their interests may be affected are not received at the earliest possible stage in the negotiations. In the absence of comment the negotiating Government should, as indicated in the Report of the 1926 Conference, be entitled to assume that no objection will be raised to its proposed policy.

*(i) The Channel of Communication between Dominion Governments and Foreign Governments*

At the Imperial Conference of 1926 it was agreed that, in cases other than those where Dominion Ministers were accredited to the Heads of foreign States, it was very desirable that the existing diplomatic channels should continue to be used, as between the Dominion

Governments and foreign Governments, in matters of general and political concern.

While the Conference did not wish to suggest any variation in this practice, they felt that it was of great importance to secure that the machinery of diplomatic communication should be of a sufficiently elastic and flexible character. They appreciated that cases might arise in which, for reasons of urgency, one of His Majesty's Governments in the Dominions might consider it desirable to communicate direct with one of His Majesty's Ambassadors or Ministers appointed on the advice of His Majesty's Government in the United Kingdom on a matter falling within the category mentioned. In such cases they recommended that the procedure just described should be followed. It would be understood that the communication sent to the Ambassador or Minister would indicate to him that, if practicable, he should, before taking any action, await a telegram from His Majesty's Government in the United Kingdom, with whom the Dominion Government concerned would simultaneously communicate.

As regards subjects not falling within the category of matters of general and political concern, the Conference felt that it would be to the general advantage if communications passed direct between His Majesty's Governments in the Dominions and the Ambassador or Minister concerned. It was thought that it would be of practical convenience to define, as far as possible, the matters falling within this arrangement; the definition would include such matters as, for example, the negotiation of commercial arrangements affecting exclusively a Dominion Government and a foreign Power, complimentary messages, invitations to non-political conferences and requests for information of a technical or scientific character. If it appeared hereafter that the definition was not sufficiently exhaustive it could, of course, be added to at any time.

In making the above recommendations, it was understood that, in matters of the nature described in the preceding paragraph, cases might also arise in which His Majesty's Governments in the Dominions might find it convenient to adopt appropriate channels of communication other than that of diplomatic representatives.

The Conference were informed that His Majesty's Government in the United Kingdom were willing to issue the necessary instructions to the Ambassadors and Ministers concerned to proceed in accordance with the above recommendations.

#### *(j) Status of High Commissioners*

The question of precedence of High Commissioners for the Dominions in London was raised at the Imperial Conference of 1923 by the then Prime Minister of Canada (Mr. Mackenzie King). As a result of the discussion at that Conference and subsequent correspondence with the Prime Ministers of the Dominions, a proposal

was submitted to, and approved by the King, that the Dominion High Commissioners should be given precedence, on ceremonial occasions, after any members of the United Kingdom or Dominion Cabinets who might be present on any given occasion, but not in any case given a position superior to that accorded by the United Kingdom Table of Precedence to Secretaries of State.

At the present Conference the question was raised whether it might be possible in any way to improve the status accorded, as a result of the 1923 discussions, to Dominion High Commissioners in London in order to emphasize the importance of their position as the representatives in London of other Governments of His Majesty. The desirability of such action, if it were possible, was generally recognized, more particularly in view of the constitutional position as defined by the Imperial Conference of 1926.

On the other hand, there was obvious difficulty in according to the representatives in London of any of His Majesty's Governments a status which would place them in a position higher than that accorded, not only to His Majesty's principal Ministers in the United Kingdom, but also to the members of the respective Dominion Governments when they were visiting the United Kingdom.

As the result of the discussion, His Majesty's Government in the United Kingdom intimated that they were prepared to recommend to the King that the Dominion High Commissioners should on all ceremonial occasions (other than those when Ministers of the Crown from the respective Dominions were present) rank immediately after Secretaries of State, that is, before all Cabinet Ministers in the United Kingdom, except Secretaries of State and those Ministers who already have higher precedence than Secretaries of State. It had been ascertained that, if such a recommendation were made to the King, His Majesty would be graciously pleased to approve it. As regards the position of the representative of a Dominion in relation to a Minister of the Crown visiting the United Kingdom from that Dominion, the existing position would remain unaltered, that is, normally a Minister of the Crown from a Dominion visiting the United Kingdom would be given precedence immediately before the High Commissioner concerned.

The representatives of the United Kingdom at the Conference expressed the hope that His Majesty's Governments in the Dominions would consider the question of recommending equivalent precedence for any High Commissioner appointed by His Majesty's Government in the United Kingdom in a Dominion.

## VII. Arbitration and Disarmament

In the sphere of foreign affairs, apart from the review of certain special questions of foreign policy, the main task before the Con-

ference was the discussion of the means by which the Members of the British Commonwealth could best co-operate in promoting the policy of disarmament and world peace.

These questions were considered by a Committee under the Chairmanship of the Hon. Maurice Dupré, K.C., M.P., Solicitor-General, Canada.

These discussions naturally covered two main fields:

- I. Formal measures for the preservation of peace including the improvement of the machinery for the peaceful settlement of international disputes; and
- II. Measures for the reduction and limitation of armaments.

### (1) *Formal measures for the Preservation of Peace*

The Conference noted with pleasure the progress which had been made since the last Imperial Conference in this field and in particular the important steps taken in the conclusion of the Pact of Paris and the acceptance by all Members of the British Commonwealth of the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice. The Conference, having considered the provisions of the General Act for the Pacific Settlement of International Disputes, approved the general principles underlying the Act. The representatives of the United Kingdom, Canada, the Commonwealth of Australia, New Zealand, the Irish Free State, and India, intimated that it was proposed to commend the General Act to the appropriate authority with a view to accession on conditions mainly similar to those attached to their respective acceptances of the Optional Clause; in particular the reservation regarding questions which by international law fall within the domestic jurisdiction of the parties would be retained by those Members of the Commonwealth who had adopted it in accepting the Optional Clause, in view of the importance attached by many of His Majesty's Governments to certain matters, such as immigration, which are solely within their domestic jurisdiction. The representatives of the Union of South Africa intimated that His Majesty's Government in the Union were not opposed to the principle of the General Act but that the Act would be further examined by that Government before they could arrive at a final decision, as some time would be required for a study of certain questions involved.

The Conference further considered the proposals which had been made to bring the Covenant of the League of Nations into harmony with the Pact of Paris and reached the conclusion that the principle underlying these proposals is one which should receive the support of all the Governments represented at the Conference.

The Conference also placed on record the view that the amendments to the Covenant which were drafted by the Sub-Committee appointed for this purpose by the First Committee at the Eleventh

Assembly of the League of Nations should be recommended to the several Governments for acceptance. The Conference was further of opinion that the entry into force of these amendments should be made dependent upon the entry into force of a General Treaty for the Reduction and Limitation of Armaments.

### *(2) Measures for the Reduction and Limitation of Armaments*

The Conference desired to record its conviction that the future peace of the world depends upon the early adoption of some general scheme of disarmament by international agreement and that every effort should be made to convoke a General Disarmament Conference at an early date in order that the obligations accepted by all the Members of the League under Article 8 of the Covenant might be honoured without further delay.

The Conference considered the text of the draft of a Disarmament Convention drawn up by the Preparatory Commission and reached the conclusion, as the result of an exchange of views, that the principles underlying the draft Convention should be approved. The Conference was in general further satisfied that the provisions of the draft Convention, with certain proposed amendments, afforded an adequate basis for an effective system of disarmament.

The Conference took note of the deposit of ratifications of the London Naval Treaty, which took place while it was in session, and desired to record its satisfaction at the progress thereby achieved in the sphere of naval disarmament.

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## IX. Defence

As already mentioned, the great pressure of work in connexion with inter-Imperial Relations and Economic questions rendered it impossible to arrange any plenary discussions on Imperial Defence.

At an early stage of the Conference, however, arrangements were made for the Chiefs of Staff of the three Services in the United Kingdom and representatives of the Services of the Dominions and India to meet together and discuss matters of common interest. The existing arrangements for consultation and co-operation (including questions of general defence such as the supply of war material and the co-ordination of defensive arrangements as well as the staff arrangements of the respective services), which have grown up as the result of past Imperial Conferences, were reviewed, and, where necessary, recommendations were submitted for their improvement in matters of detail.

In addition, meetings took place at the Admiralty, War Office, and Air Ministry at which questions of naval, military, and air defence respectively were examined from a more technical point of view.

*Naval Base at Singapore*

As a result of discussion between representatives of the United Kingdom, the Commonwealth of Australia, and New Zealand, it was recommended that the present policy of the ultimate establishment of a defended naval base at Singapore should be maintained and that the Jackson contract should be continued. It was, however, also recommended that, apart from the latter expenditure and such as will be required for the completion of the air base on the scale at present contemplated, the remaining expenditure, i.e. that required for completing the equipment of the docks and for defence works, should be postponed for the next five years, when the matter could be again reviewed in the light of relevant conditions then prevailing.

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## XII. General Economic Conclusions

It was apparent that all parts of the Commonwealth were united in a common desire that all practicable steps should be taken to promote and develop inter-Imperial trade, and at the Second Plenary Session of the Conference, held on the 8th October, a discussion of great importance took place on the methods to be used to achieve this end. The speeches made on that occasion on behalf of His Majesty's Governments in the Dominions and the Government of India are printed as an Annex to this Summary.

No statement of policy was made on behalf of His Majesty's Government in the United Kingdom during the Second Plenary Session, but at the meeting of Heads of Delegations on the 13th November, the following statement was made by their representatives:

1. His Majesty's Government in the United Kingdom, believing that the development of inter-Imperial markets is of the utmost importance to the Commonwealth, have declared that the interests of the United Kingdom preclude an economic policy which would injure its foreign trade or add to the burdens of the people; but that their fiscal policy does not preclude marketing propaganda and organization which will secure valuable opportunities for the consumption of Dominion products in the United Kingdom.

2. His Majesty's Government in the United Kingdom have suggested that the Governments of the Empire should undertake to make forthwith a close examination of the various methods by which each may make the greatest possible contribution to economic co-operation within the Empire with a view to presenting reports to a Conference which, it has been suggested, should be held next year or as soon as the reports are ready.

3. In the meantime His Majesty's Government in the United Kingdom have declared that the existing preferential margins accorded by the United Kingdom to other parts of the Empire will not be reduced for a period of three years or pending the outcome of the suggested Conference,

subject to the rights of the United Kingdom Parliament to fix the budget from year to year.

4. His Majesty's Government in the United Kingdom agree to reconstitute the Empire Marketing Board as a body with a fixed minimum annual income, with a provision enabling it to receive such other contributions from public or private sources as it may be willing to accept, for the purpose of furthering the marketing of Empire products.

5. His Majesty's Government in the United Kingdom agree to the reconstitution of the Imperial Economic Committee on the lines recommended by the Committee of the Conference on Economic Co-operation.

In view of the above statement made by the representatives of His Majesty's Government in the United Kingdom, the representatives of His Majesty's Government in the Union of South Africa made the following statement:

The Government of the Union of South Africa declare that the existing preferential margins accorded by South Africa to the United Kingdom will not be reduced for a period of three years or during such shorter period as the existing preferential margins accorded to South Africa by the United Kingdom may remain in force.

The discussion arising out of the statements made at the Second Plenary Session was continued at a series of meetings of Prime Ministers and Heads of Delegations held between the 9th and 17th October, in the course of which it was intimated on behalf of His Majesty's Government in the United Kingdom that they were opposed to any policy involving duties on foodstuffs or raw materials. They suggested that there were other methods worthy of examination by which the common object of increasing inter-Imperial trade might be attained, and in this connexion mention was made of quotas, import boards, bulk purchase, direct exchange of commodities and the promotion of agreements between industrialists, and improved machinery for inter-Commonwealth consultation in economic matters. During these discussions it became apparent that the Governments of the wheat-exporting Dominions (Canada and Australia) attached special importance to increasing the sales of their wheat in the United Kingdom, particularly in view of the depression in the world's wheat markets. An informal Committee of Ministers representing the United Kingdom, Canada, and the Commonwealth of Australia was accordingly set up to explore the wheat situation.

On the 14th October this informal Committee was reconstituted as the 'Committee on Economic Co-operation' under the Chairmanship of the Right Hon. William Graham, M.P., President of the Board of Trade, and representatives of New Zealand, the Union of South Africa, the Irish Free State, Newfoundland, and India were added to it. The subjects referred to the Committee by the Meetings of Prime Ministers and Heads of Delegations for examination were as follows:

The quota system.

Bulk purchase schemes, import boards, direct exchange of commodities, and the promotion of agreements between industrialists. Imperial Shipping Committee, Imperial Economic Committee, and Empire Marketing Board.

The Report of the Committee on Economic Co-operation, which is dealt with in Section XIII below, together with the views expressed on behalf of the various Governments, were considered at Meetings of Prime Ministers and Heads of Delegations held on the 12th and 13th November.

At the latter Meeting it was decided to recommend the following Resolutions, which were adopted by the Conference:

I. The Imperial Conference records its belief that the further development of inter-Imperial markets is of the utmost importance to the various parts of the Commonwealth.

II. Inasmuch as this Conference has not been able, within the time limit of its deliberations, to examine fully the various means by which inter-Imperial trade may best be maintained and extended, it is resolved that the Economic Section of the Conference be adjourned to meet at Ottawa on a date within the next twelve months to be mutually agreed upon, when that examination will be resumed with a view to adopting the means and methods most likely to achieve the common aim; provided that this reference is not to be construed as modifying the policy expressed on behalf of any of the Governments represented at this Conference.

III. The agenda for the meeting referred to in the previous resolution will be agreed between the several Governments.

(The remainder of the Report deals with economic co-operation, standardization, communications, civil aviation, oversea settlement, forestry, research, and other economic questions.)

#### E. THE STATUTE OF WESTMINSTER, 1931

##### 1. THE STATUTE OF WESTMINSTER, 1931

(*British Statutes*, 22 George V, c. 4)

An Act to give effect to certain resolutions passed by Imperial Conferences held in the years 1926 and 1930.

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declarations and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would



be in accord with the established constitutional position of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne or the Royal Style and Titles shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion:

And whereas it is necessary for the ratifying, confirming, and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:

Now, therefore, be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. In this Act the expression 'Dominion' means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland.

2. (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule, or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly

declared in that Act that that Dominion has requested, and consented to, the enactment thereof.

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legislature of a British possession did not include reference to the Parliament of a Dominion.

6. Without prejudice to the generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment, or alteration of the British North America Acts, 1867 to 1930, or any order, rule, or regulation made thereunder.

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

9. (1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

10. (1) None of the following sections of this Act, that is to say, sections two, three, four, five, and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand, and Newfoundland.

11. Notwithstanding anything in the Interpretation Act, 1889, the expression 'Colony' shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

12. This Act may be cited as the Statute of Westminster, 1931.

## 2. SPEECH OF HON. P. MCGILLIGAN ON THE STATUTE OF WESTMINSTER

(*Irish Free State Dáil Debates*, July 16, 1931, pp. 2290-308)

Hon P. MCGILLIGAN: I move:

That Dáil Éireann approves of the Report of the Commonwealth Conference, 1930, and recommends the Executive Council to take such steps as they think fit to give effect thereto.

I would like to call the attention of the House to the fact that those comparatively few—twelve or thirteen—pages of this Report which relate to those relations of Great Britain to the other members of the Commonwealth which were formerly regulated by a central Executive and a central Parliament mark, definitely and clearly, the end of an epoch. They are the last chapter in the history of one of the most highly organized and effective legal systems of which there is any record. I stated to the House two years ago that it was the purpose of the Conference of 1929 that the whole legal machinery of the old Colonial Empire should be taken asunder in so far as the Commonwealth of Nations was concerned.

In the year 1930 I submitted to the judgement of the House that the recommendations of the Conference of 1929 had carried out that purpose. The Conference of 1930 approved the recommendations of that of 1929, and that approval closes the story. The system which it took centuries to build up has been brought to an end by four years

of assiduous concentrated collaboration between the lawyers and the statesmen of the States of the Commonwealth.

Deputies will agree with me when I say that there can be no two views on the question that when this country accepted the status of Canada in certain respects in 1921 the status of Canada then accepted was not a stereotyped legal formula. Therein lies the kernel of the whole Treaty position and the key to the progress that has gone on—I will not say at our sole behest, or even always at our instance—since 1926. How well the founders of this State builded the developments which have since taken place go to show. The task begun in 1926—the first Commonwealth Conference since the Treaty, in which we took an active part—is completed in the paragraphs written down in Part VI of this Report. What will be the result when the enactments referred to there are passed into law?

Let me take, first of all, the declaration set out on p. 18 of the Report:

No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend, or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested and consented to the enactment thereof.

That declaration amounts to an act of renunciation by the British Parliament to legislate for the members of the Commonwealth. If any Deputy has doubts about it let him consult the text of this Report on p. 18 itself. So sweeping was the declaration that it was feared that it put the British Parliament in a worse position *vis-à-vis* the members of the Commonwealth than that in which the Parliament of any State (not a member of the Commonwealth) stands in relation to other States generally.

I should explain that in more detail. The House is aware that, although the Parliament of the French Republic does not legislate for the German Reich, nevertheless, the laws of the French Republic can have effect in respect of acts done in German territory. The United Kingdom delegates at the Conference of 1930 feared that, if the declaration stood in the form first set out on p. 18, the effect would be to prevent any statute of the British Parliament from having 'the operation which the legislation of one State normally has in relation to the territory of another'. In other words, they feared that the effect of a declaration in the form referred to would be to prevent an Act of the British Parliament which declared bigamy unlawful having any effect if the bigamous act took place in, say, Canada or South Africa, whereas the bigamous act would be an offence punishable under its law if it took place in France or Germany. That view was met by the insertion of the words 'as part of the law of the Dominion' in the draft declaration in the place where it now occurs in italics.

But apart from the difficulty of interpretation, what is the essential doctrine fastened into that declaration? That declaration will not remain merely as a record in the report of a conference of delegates from the various parts of the Commonwealth. It will become at the end of this year an enactment in a British statute. And its effect then will be to destroy as a matter of law what has already been destroyed as a matter of practice, the legislative sovereignty of the British Parliament in the Commonwealth in the sense in which it existed and functioned since the foundations of the Colonial Empire were laid. The importance of that achievement is beyond question. I do not want to overstress it, but I do not want to have the effect of it minimized.

If I am asked why this result could not have been achieved in another way, by an agreement, for example—an agreement resembling the Treaty of 1921, I will say that it could have been achieved in that way and that an agreement to effect the same result was in fact discussed. But so long as the result aimed at was secured it did not matter much how exactly it was carried out. But if I am asked why was it proposed that the declaration referred to and the other declarations in this part of the Report should go into a British statute at all, my answer is this—a very simple answer—that you would have had a British statute in any event, a statute ratifying the agreement, but that, above all, you had to have an Act of that particular Parliament by which the powers now taken away, the rights now denied, were exercised. One has not heard of a Canadian statute applying to South Africa in the same way—i.e. of its own force and with the authority of a sovereign Parliament exercising jurisdiction in South Africa behind it—as that in which a British statute applied to Australia or Newfoundland. It was the British Parliament only which legislated in that way. Hence this declaratory British statute. Or, to put it in another way, this declaration must be understood in two senses, or rather, it must be viewed from two angles. It must be viewed from the point of view of the history which it ends as well as from that of the history which it begins. The last words in the long story of British legislative supremacy occur nowhere more fittingly than in a statute passed as its own deliberate act by the assembly most closely associated with that phenomenon. Lastly, there were the courts—you had to put an end to speculative judicial thought, you had to coerce the judicial mind, I do not say here, but in those States of the Commonwealth where the Imperial statute—as it was called—ran for so long, and where the swift sword of the Colonial Laws Validity Act had been wielded so frequently and dealt such quick disaster to the laws of their own Parliaments. And the House will agree that the only way in which to coerce the judgement of lawyers trained in such a tradition was by putting an end once and for all to the principle upon which it rested, putting an end to it in a definite

legal way, a way which would leave no margin whatever for those amazing speculations in which judges sometimes indulge—in a word, by an Act of Parliament. . . .

*I do not mean that the object or effect of this statute is, or will be, to write a new legal constitution for the Commonwealth of Nations. Let there be no mistake about that. This clause illustrates very clearly the declaratory character of the whole statute. The House will observe that the clause is cast in a form which assumes the existence of the extra-territorial power at the present time. This statute will confer no new legal powers so far as the Irish Free State is concerned. It merely declares their present existence in the States of the Commonwealth. It is a direction; a definition, and a demonstration and proof in the most solemn form possible by the British Parliament that an entirely new situation has come into existence and that the former legal unitary State has gone the way of the former political unitary State and of the former diplomatic unitary State so far as States like Canada and ourselves are concerned.*

*A Deputy last year asked what interest we had in these things. He acknowledged that, so far as, say, Canada and South Africa were concerned, these clauses had a significance having regard to the historical background—the legal background—on which, so far as those countries were concerned, these events were going forward. That is precisely what I meant a moment ago when I said that you cannot approach the consideration of this subject as if it had no history, no genesis, no development and no background of that kind. It had such a background, and it is because it had, that this statutory method, so far as those countries are concerned, was regarded as desirable and necessary. I must tell the House that the question of method was discussed and explored.*

*If I have made that point clear I wish, before passing to the clause on the Colonial Laws Validity Act, to make one other observation, and it is this. The power of this Parliament to pass laws having extra-territorial operation has nowhere been denied, because it is undeniable. The matter has not come on a direct issue before our own courts, but in the only case in which it has fallen to be judicially considered the following language was used by Judge Fitzgibbon:*

*I am not prepared to hold that legislation in this country making it a crime for persons to conspire against the peace, order, and good government of this country, or to defraud our customs, or to violate our laws is necessarily invalid because of the secondary opinion in McLeod's case, [1891] A.C. 455, nor that our courts would not have full jurisdiction to deal with such offenders if they should happen to come within the limits of the Saorstát. (Alexander v. Circuit Court Judge of Cork, [1925] 2 I.R., p. 170.)*

*I refer to this dictum—a dictum which is significant although obiter—for one purpose only, namely, to show that the form of this clause was advisedly declaratory, advisedly drawn in words which assume*

the existence at the present time of the powers to which it relates so far as the Irish Free State is concerned.

On the matter of the Colonial Laws Validity Act, Deputies will observe that the repeal of this statute is absolute and unconditional in respect of those members of the Commonwealth to which it was held to apply. It may be asked why the Act was not repealed in words such as these: 'The Colonial Laws Validity Act, 1865, shall be and is hereby repealed'; but it will be borne in mind that the Act is to remain so far as the colonies and dependencies are concerned, and the proper form to adopt was the form found in this clause. There is a clean-cut repeal so far as the members of the Commonwealth to which I have referred were affected by the Act at any time.

We come then to the recitals to be inserted in the proposed legislation. The first recital relates to the non-application of future statutes of the British Parliament to the States of the Commonwealth. I want the House to look again in this connexion at paragraph 55 of the Report of 1929. 'Practical considerations', it says, 'affecting both the drafting of Bills and the interpretation of statutes make it desirable that this principle should also be expressed in the enacting part of the Act.' That is another way of putting the point which I have been endeavouring to emphasize all through. A recital would have been sufficient in so far as we were concerned. But you had the other States of the Commonwealth with a long tradition of British legislation operating in their territory. Those states wanted a legal termination of that situation. They wanted something more than a recital in the statute which had to be passed anyway to repeal the Colonial Laws Validity Act, e.g. they wanted an actual enactment. I think that Deputies will agree that having regard to the legal background of the whole matter in Canada or Australia this was the proper course for those states to adopt.

The second recital is that relating to the Crown. I stated to the House last year the reason for this particular recital. But I should like to restate it in a very few words. The legal ties that bound, say, Canada and Australia to the United Kingdom will disappear when this Act becomes law. The legal restrictions upon the powers of the Parliament of Canada and the Parliament of Australia will be removed. There will be no limitation, no restriction whatever.

The House will notice that that fact is repeated in various ways through the Report of 1929. The frequency of the phrase 'the new position' is not accidental; it is deliberate. There is the ending of a chapter, an epoch—a history in which the legal and legislative predominance of the United Kingdom Parliament is plain to be seen. But 'by the removal of all restrictions upon the legislative powers of the Parliaments of the Dominions', says paragraph 58 of the Report of 1929, 'and the consequent effective recognition of the equality of

those Parliaments with the Parliament of the United Kingdom, the law will be brought into harmony with the root principle of equality governing the free associations of the members of the British Commonwealth of Nations'. The House will notice the emphasis throughout upon what is being done. The law, the legal position, is being made to square with the central and predominant political fact of absolute freedom and unequivocal co-equality. And in the light of that conception of the matter the recital relating to the Crown is inserted. The States of the Commonwealth control the Crown and the prerogatives of the Crown absolutely. But the Crown function is accepted in the arrangement to which we have become parties. You could not, therefore, have a series of Acts of Parliament throughout the Commonwealth dealing with, say, the succession in different ways. That would be undesirable. The function of the Crown may be exercised in a different way here from that in which it is exercised in Canada; that is a matter of the substance and form of the advice given here and that given in Canada. You could *legislate for the Crown* here in a way different from that in which it is legislated for in the United Kingdom. The United Kingdom might, e.g., restrict a certain royal prerogative by statute. The Oireachtas might abolish the same prerogative so far as the Irish Free State is concerned. There is no doubt whatever about that. But there had, in the nature of things, to be some arrangement to prevent the whole association from being confused within itself by conflicting legislation as to such a matter as the succession. The association is a free association. Freely, therefore, the members of it undertook this arrangement relating to the Crown which is the symbol of the free association of them all.

I do not fear that the House will deduce from this arrangement any doubts as to the several capacities of the King, or draw any erroneous conclusion to the effect that the States of the Commonwealth are a political or diplomatic unit. When a Heads of States Treaty is ratified by the King on the advice of the Government of the Irish Free State, the whole transaction is the transaction of the Irish Free State. The King acting on the advice of the British Government can no more contract for the Irish Free State than can the King of Italy or the Mikado of Japan. The conclusion of the Treaty in the Heads of States form is merely an old-established international usage. In its binding force it differs in no way whatever as a matter of international law from an inter-governmental agreement. But what I want to emphasize is the fact that no argument whatever is open on the agreement as to the King to the effect that for diplomatic purposes, or political purposes, or purposes of international life and action, the Commonwealth of Nations is a single entity. When we agreed to this recital in the form in which it appears, the form which says that 'the Crown is the symbol of the free association of the members of the British Commonwealth of Nations', and went on to say that 'any



alteration in the law touching' the matters referred to in this context would require the assent of all the Parliaments of the Commonwealth, we were simply stating that in the exercise of our sovereign legislative powers which exist apart from and over and above all other considerations, which are supreme, paramount, and uncontrolled, we would have regard to the desirability for uniformity of reference to the symbol of the association and the desirability for avoidance of legal confusion in regard to the succession. That is the extent of the meaning of this recital. It assumes the absolute inherent right of each of the Parliaments to legislate for the Crown without regard to these considerations.

On the matter of nationality the Report affirms paragraphs 73 to 78 inclusive, of the Report of 1929. It says that 'it is for each member of the Commonwealth to define for itself its own nationals'. The law of each nation of the Commonwealth will henceforth confer a status on its nationals which will be recognized throughout the Commonwealth and outside the Commonwealth. Paragraph (4) on page 20 [p. 399] says that 'the possession of the common status in virtue of the law for the time being in force in any part of the Commonwealth should carry with it the recognition of that status by the law of every other part of the Commonwealth'. In other words, our law will confer the status, and the law of Canada and South Africa, &c., will recognize the status thus conferred. Similarly our law will recognize the status conferred by the Canadian or the South African statute. This arrangement is based upon two things; the separate and distinct nationhood of this country from Great Britain, of Canada from New Zealand, &c., and the desirability for mutual recognition of the status of the nationals of the various countries of the Commonwealth. The essential point is that you have not a single Commonwealth nationality based upon a single law. It is not a single Commonwealth nationality at all, or even a dual nationality. The Irish Free State national will be that and nothing else so far as his nationality is concerned. His own nationality law will rule him, and his own State, through its representatives abroad, will protect him. The treaty benefits of our treaties with other countries will accrue to him by virtue of his Irish nationality. And the recognition of his Irish nationality will be Commonwealth-wide and world-wide.

We had one purpose in 1926, and that was that there must be uprooted from the whole system of this State the British Government; and in substitution for that there was accepted the British Monarch. He is a King who functions entirely, so far as Irish affairs are concerned, at the will of the Irish Government, and that was the summing up of the whole aim and the whole result of the conferences of 1926, 1929, and 1930: that one had to get completely rid of any power, either actual or feared, that the British Government had in relation to this country. In substitution for that under the Treaty

there was accepted the monarchy, as I say, a monarchy in every respect, in relation to Irish affairs, subject to the control of an Irish Government. That is the result of the 1926, 1929, and 1930 conferences. For these reasons, and because that is the result aimed at, and the result achieved, I ask the House to pass the resolution that is before it.

### 3. THE IRISH FREE STATE AND THE STATUTE OF WESTMINSTER

(Cf. *supra*, sub-section B. 6 (c), pp. 370-3, and *infra*, sub-section H. 1, pp. 437-40.)

### F. FORMAL ACTION BY THE CROWN ON DOMINION ADVICE, 1931-6

#### 1. ANNOUNCEMENT BY THE GOVERNMENT OF THE IRISH FREE STATE (*Irish Times*, March 28, 1931)

The visit of the Minister for External Affairs to His Majesty the King at Buckingham Palace on the 19th of March was concerned with constitutional matters of the highest importance—namely, the new procedure to be adopted by the Government of the Irish Free State in tendering advice to the King and the execution of certain documents having an international character.

It will be recalled that the report of the Imperial Conference of 1926 recorded the fact that the Governor-General holds 'in all essential respects the same position in relation to the administration of public affairs in the Dominion as is held by His Majesty in Great Britain, and that he is not the representative or agent of His Majesty's Government in Great Britain or of any department of that Government'.

In matters of internal administration—for example, the function of assenting to bills of Parliament, &c.—advice is tendered by the Saorstát Government to the Governor-General, who, on that advice, signifies the assent of the King.

In matters relating to external administration—namely, the issue of full power to negotiate and conclude international treaties and the ratification of such treaties—the practice has been to tender advice to the King through the Secretary of State for the Dominions in London. The advice so tendered was solely and exclusively the advice of the Saorstát Government, but it was tendered through the channel referred to.

The fact that that channel of communication with His Majesty was used in matters of external administration, and also the fact that the document issued by the King containing either full power to a plenipotentiary to negotiate and conclude a treaty, or the King's ratification of a treaty, was sealed with the Great Seal of the Realm, a purely British Seal, gave rise to considerable confusion in the minds of

foreign Governments and of eminent international lawyers in other countries as to the precise constitutional status of the Irish Free State, and of its responsibility in international law for the transactions concluded.

In order to remove this confusion the Saorstát Government expressed the view that the channel of communication heretofore used between the Governments of the States of the Commonwealth and the King should be discontinued. It was urged by them that advice tendered to the King should be communicated direct to him, and not through the channel of any British Minister.

It was also their view that the seal to be used by the King on a particular document of the kind referred to should be a seal struck, kept, and released by the Government of the Irish Free State, on whose advice the document was issued by the King.

The arrangement now made is that the Government of the Irish Free State will advise His Majesty direct, and that the channel of communication heretofore used, namely, the Secretary of State for the Dominions, will no longer be used. In addition, a seal will be struck in the Irish Free State to be used on all documents of the kind referred to issued by the King on the advice of the Government of the Irish Free State and on which the Great Seal of the Realm has been used heretofore.

The new Seal will be the property of the Irish Free State, and will be struck, kept, and controlled in the Irish Free State.

A Signet Seal will also be struck, and will be affixed by the Minister for External Affairs on all documents relating to the Irish Free State issued by His Majesty on the advice of the Government of the Irish Free State other than those on which the Great Seal of the Realm has heretofore been used.

These developments mark another stage in the success of the policy of the Saorstát Government to bring constitutional forms into conformity with the constitutional position now existing.

## 2. THE STATUS OF THE UNION ACT

(*South African Statutes*, 1934, No. 69)

Whereas the delegates of His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord 1926 and 1930, did concur in making the declarations and resolutions set forth in the Reports of the said Conferences, and more particularly in defining the group of self-governing communities composed of Great Britain and the Dominions as 'autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect

of their domestic or external affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations';

And whereas the said resolutions and declarations in so far as they required legislative sanction on the part of the United Kingdom have been ratified, confirmed and established by the Parliament of the United Kingdom in an Act entitled the Statute of Westminster, 1931 (22 Geo. V, c. 4);

And whereas it is expedient that the status of the Union of South Africa as a sovereign independent state as hereinbefore defined shall be adopted and declared by the Parliament of the Union and that the South Africa Act, 1909 (9 Edw. VII, c. 9) be amended accordingly;

And whereas it is expedient that the said Statute of Westminster, in so far as its provisions are applicable to the Union of South Africa, and an Afrikaans version thereof, shall be adopted as an Act of the Parliament of the Union of South Africa;

Now, therefore, be it declared and enacted by the King's Most Excellent Majesty, the Senate, and the House of Assembly of the Union of South Africa, as follows:

1. In this Act the expression 'the South Africa Act' means the South Africa Act, 1909 (9 Edw. VII, c. 9) as amended from time to time.

2. The Parliament of the Union shall be the sovereign legislative power in and over the Union, and notwithstanding anything in any other law contained, no Act of the Parliament of the United Kingdom and Northern Ireland passed after the eleventh day of December, 1931, shall extend, or be deemed to extend, to the Union as part of the law of the Union, unless extended thereto by an Act of the Parliament of the Union.

3. The parts of the Statute of Westminster, 1931 (22 Geo. V, c. 4) and the Afrikaans version thereof, set forth in the Schedule to this Act, shall be deemed to be an Act of the Parliament of the Union and shall be construed accordingly.

4. (1) The Executive Government of the Union in regard to any aspect of its domestic or external affairs is vested in the King, acting on the advice of His Ministers of State for the Union, and may be administered by His Majesty in person or by a Governor-General as his representative.

(2) Save where otherwise expressly stated or necessarily implied, any reference in the South Africa Act and in this Act to the King shall be deemed to be a reference to the King acting on the advice of his Ministers of State for the Union.

(3) The provisions of sub-sections (1) and (2) shall not be taken to affect the provisions of sections *twelve, fourteen, twenty, and forty-five* of the South Africa Act and the constitutional conventions

relating to the exercise of his functions by the Governor-General under the said sections.

5. Section *two* of the South Africa Act is hereby amended by the insertion after the word 'implied' of the words "'heirs and successors'" shall be taken to mean His Majesty's heirs and successors in the sovereignty of the United Kingdom of Great Britain and Ireland as determined by the laws relating to the succession of the Crown of the United Kingdom of Great Britain and Ireland'.

6. Sections *twenty-six* and *forty-four* of the South Africa Act are hereby amended by the deletion of the words 'a British subject of European descent' in paragraphs (d) and (c) respectively of the said sections and the substitution therefor of the words 'a person of European descent who has acquired Union nationality whether—

- (i) by birth or
- (ii) by domicile as a British subject or
- (iii) by naturalization, or otherwise, in terms of Act 40 of 1927 or of Act 14 of 1932'.

7. Section *fifty-one* of the South Africa Act is hereby amended by the deletion of the words 'of the United Kingdom of Great Britain and Ireland' where they occur in the oath and in the affirmation prescribed by the said section, and by inserting the words 'King or Queen (as the case may be)' immediately after the words 'His Majesty'.

8. Section *sixty-four* of the South Africa Act is hereby repealed and the following section substituted therefor—

64. When a Bill is presented to the Governor-General for the King's assent he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name or that he withholds assent. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend, and the House may deal with the recommendation.

9. Section *sixty-seven* of the South Africa Act is hereby amended by the deletion of the words 'or having been reserved for the King's pleasure shall have received his assent'.

10. Nothing in this Act contained shall affect the provisions of section *one hundred and six* of the South Africa Act, relating to an appeal to the King-in-Council, or the provisions of sections *one hundred and fifty* and *one hundred and fifty-one* of the said Act.

11. (1) Sections *eight* and *sixty-six* of the South Africa Act are hereby repealed.

(2) Section *sixty-five* shall be repealed as from a date to be fixed by the Governor-General by proclamation in the *Gazette*.

12. This Act shall be known as the Status of the Union Act, 1934.

## 3. THE ROYAL EXECUTIVE FUNCTIONS AND SEALS ACT

(*South African Statutes*, 1934, No. 70)

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Assembly of the Union of South Africa, as follows:

1. (1) There shall be a Royal Great Seal of the Union hereinafter referred to as the Great Seal, which shall show on the obverse the effigy of the Sovereign, with his full titles as circumscription and on the reverse the coat of arms of the Union with supporters and the inscription 'Unie van Suid-Afrika' and 'Union of South Africa'.

(2) There shall be a Royal Signet (hereinafter referred to as the Signet) showing the reverse of the Great Seal with the Tudor Crown for crest and the King's full title in Latin on the outer rim and the words 'Unie van Suid-Afrika—Union of South Africa' on the inner rim.

(3) The Great Seal and Signet shall be of a design and size approved of by the King and the Great Seal shall show the effigy of the Sovereign in such manner and of such design as His Majesty may be pleased to approve.

2. In the case of a change in the person of the Sovereign the then existing seals shall be used until such time as new seals have been struck and put into use.

3. The Prime Minister of the Union or, in his absence, his deputy shall be the Keeper of the Great Seal and the Signet.

4. (1) The King's will and pleasure as Head of the Executive Government of the Union shall be expressed in writing under his sign manual, and every such instrument shall be countersigned by one of the King's Ministers for the Union.

(2) The King's sign manual shall furthermore be confirmed by the Great Seal on all royal proclamations and he may, by proclamation, prescribe from time to time which other public instruments bearing his sign manual shall pass either the Great Seal or the Signet.

(3) The Keeper of the Seals shall affix either the Great Seal or the Signet, as the case may be, to any instrument bearing the King's sign manual and the countersignature of one of His Majesty's Ministers of State for the Union and required to pass either the Great Seal or the Signet.

(4) The provisions of this section shall not affect the exercise of the powers under sections *twelve, fourteen, twenty, and forty-five* of the South Africa Act, 1909, by the King or the Governor-General.

5. (1) The Governor-General-in-Council may by regulation provide for the making of wafer seals, representing the Great Seal, of such materials as he may deem suitable and prescribe the size of the cast to be used for that purpose.

(2) The wafer seals made in pursuance of the provisions of subsection (1) shall be kept by the Keeper of the Great Seal and may be

used by him for sealing instruments which are required to pass the Great Seal, and instruments to which such wafer seals have been affixed shall be deemed to be sufficiently sealed in terms of this Act.

6. (1) Whenever for any reason the King's signature to any instrument requiring the King's sign manual cannot be obtained or whenever the delay involved in obtaining the King's signature to any such instrument in the ordinary course would, in the opinion of the Governor-General-in-Council, either frustrate the object thereof, or unduly retard the dispatch of public business, the Governor-General shall, subject to such instructions as may, from time to time, in that behalf, be given by the King on the advice of His Ministers of State for the Union, execute and sign such instrument on behalf of His Majesty and an instrument so executed and signed by the Governor-General and countersigned by one of the King's Ministers of the Union shall be of the same force and effect as an instrument signed by the King.

(2) The Governor-General's signature on such an instrument shall be confirmed by his Great Seal of the Union and a resolution of the Governor-General-in-Council shall be the necessary authority for affixing the same.

7. In the absence of any Act of the Parliament of the Union providing otherwise, the powers of the King to be exercised by His Majesty in Council or by Order-in-Council, under Acts of the Parliament of the United Kingdom passed prior to the commencement of the Statute of Westminster, 1931, and extending to the Union as part of the law of the Union shall, in respect of the Union, after the commencement of this Act, be exercised respectively by the Governor-General-in-Council or by him by Proclamation in the *Gazette* unless the Governor-General-in-Council decide that the exigencies of the case require that the procedure prescribed by such Acts be followed: Provided that the King-in-Council shall in the latter case act or purport to act in respect of the Union only at the request of the Prime Minister of the Union duly conveyed and it be expressly declared in the instrument containing the King's pleasure that the Union has requested and consented to the King-in-Council so acting in respect of the Union.

8. The powers vested in, or duties imposed on, the Lord Chancellor, a Secretary of State, a Commissioner of the Treasury, the Treasury, the Admiralty, the Board of Trade, or any other functionary or authority of the United Kingdom under any Act of the Parliament of the United Kingdom referred to in section seven, or under any rule, order, or regulation framed thereunder shall after the commencement of this Act, in respect of the Union, be vested in or performed by such Minister, Department of State, functionary, or authority in the Union as the Governor-General-in-Council may by proclamation in the *Gazette* designate.

9. Sections *seven* and *eight* shall not apply to appeals to the King-in-Council under the provisions of section *one hundred and six* of the South Africa Act, 1909.

10. This Act shall be known as the Royal Executive Functions and Seals Act, 1934, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

#### 4. STATUS OF SOUTH AFRICA

(W. P. M. Kennedy, M.A., LL.B., Litt.D., Professor of Law in the University of Toronto, in *The University of Toronto Law Journal*, Lent Term, 1935, pp. 147-9)

The two South African Acts (the Status and Seals Acts) . . . ought to be carefully studied, since, it is respectfully submitted, they go a good deal beyond the claims made in the South African legislature that they contain no innovations save those of form. We need not delay over the statement in the Status Act that the Union is 'a sovereign independent state'. It is of interest to note that the claim is based on the declaration of the Imperial Conferences of 1926 and 1930. While those Conferences deliberately avoided such a definition of status, yet the logic of 'equality' would demand it, subject to the saving words 'within the Empire'. The South African Status Act may, in this respect, be defended; but with the words of the Imperial Conferences before us and such of their *travaux préparatoires* as are available, we submit that the South African deduction is not entirely natural. For the moment, the term has no legal significance, occurring as it does in the preamble to the statute.

The fundamental change lies in section 4 of the Status Act where any and every executive aspect of the domestic and external affairs of the Union is vested in the King acting on the advice of his South African Ministers and may be administered by His Majesty in person or by the Governor-General as his representative. It is submitted that this goes far beyond either previous law or constitutional custom; for the Governor-General had never received any general delegation of power as to external affairs. It is true that Dominion governments have dealt with external affairs, but in law the British Ministry shared that control; and certainly the Governor-General enjoyed no general authority over the external affairs of his jurisdiction. The new position is emphasized by the fact that under the Royal Executive Functions and Seals Act the South African Ministry will possess the right to decide what functions, both external and internal, shall be performed by the King personally on the advice of the South African Cabinet and what by the Governor-General. It is submitted that the importance of this legislation lies in the fact that the King can be eliminated personally in any matter of external affairs, and that the question of neutrality is settled. The King will



not be placed in the awkward position of receiving, perhaps contrary advice—declaring war on the advice of his cabinet in the United Kingdom and declaring South African neutrality on the advice of his South African Cabinet. The legislation would seem to imply that if the Union wants to remain neutral, such neutrality can be proclaimed by the Governor-General on South African advice. For the first time the King can be personally eliminated from dealing with the external affairs of a territory owing allegiance to him. It may well be that, as General Smuts said in the debates, the question of neutrality will be decided by the march of great and stupendous events. That is, however, a political problem. The law, for South Africa, now seems clear. Attention should also be given to the fact that, under section 6 of the Seals Act, the South African Cabinet may dispense with the King's sign manual altogether. It is very hard in the light of all this legislation to maintain in future the indivisibility of the Crown.

### G. SECESSION AND NEUTRALITY, 1920-36

#### I. SPEECH OF RIGHT HON. A. BONAR LAW ON THE GOVERNMENT OF IRELAND BILL

(*British House of Commons Debates*, March 30, 1920, pp. 1124-6)

MR. BONAR LAW (Lord Privy Seal and Leader in the House of Commons): What is the essence of Dominion Home Rule? The essence of it is that they have control of their whole destinies, of their fighting forces, of the amounts which they will contribute to the general security of the Empire. All these things are vital to Dominion Home Rule. Does my right hon. Friend propose to give these? Not at all. He is going to reserve the armed forces—that is not Dominion Home Rule. He is going to say that they must make a contribution—that is not Dominion Home Rule. The Dominions may decide to help, but it is not Dominion Home Rule for us to say how much they shall give. . . . But it goes much further than that. To say that he is in favour of Dominion Home Rule means something much more. There is not a man in this House, and least of all my right hon. Friend, who would not admit that the connexion of the Dominions with the Empire depends upon themselves. If the self-governing Dominions, Australia, Canada, chose to-morrow to say, 'We will no longer make a part of the British Empire', we would not try to force them. Dominion Home Rule means the right to decide their own destinies.

See what that means. Through all the Home Rule discussions, my right hon. Friend went always on this—'I say that this is demanded by the legal representatives of the Irish people.' They are just as much the legal representatives now they are Sinn Feiners as they were before. To say, therefore, that he is prepared to give Dominion

Home Rule means—and means nothing else—that he is prepared to give an Irish Republic. My right hon. Friend (Mr. Asquith) shakes his head, but that is no answer. His speech commits him inevitably to that if his speech is sincere. That is one alternative. From what I have said the House will see that, in my view, there is no difference between honestly granting Dominion Home Rule and openly giving self-determination to the elected representatives of Southern Ireland. . . .

## 2. THE RIGHT OF SECESSION

### (a) *South Africa*

(*South African Assembly Debates*, May 20, 22, 1930, pp. 4429-35, 4454-5, 4477-8, 4572-80)

Rt. Hon. J. C. SMUTS (Leader of the Opposition): The sovereign rights of the Dominion Parliaments make it necessary to deal with this question of succession to the throne unless the unity of the British Empire is to be placed in jeopardy. The position was dealt with by the Conference (on Dominion Legislation and Merchant Shipping Legislation), and they came to a declaration which undoubtedly is the most important matter which has emerged from their recommendations. . . . No change can be made to the succession to the British Crown throughout the British Commonwealth of Nations without the assent of the British Parliament and all the Dominion Parliaments. . . . I think we may welcome this recommendation of the Conference. It settles once and for all what might have led to grave controversy in the Commonwealth in future. Here in South Africa we know that we have had the question of secession before us. That question has now been eliminated. . . .

Hon. H. C. HAVENGA (Minister of Finance): The hon. member (General Smuts) said that if the recommendations of this Commission were carried out then we would create such an alteration in the position of our country with regard to the rights which our country would possess in the case of secession, that we certainly would never again hear of this question of secession. I think it is very unfortunate for our country that the hon. member has this afternoon given that interpretation to the recommendations. I do not know whether the hon. member realizes what an apple of discord he has thrown into our midst. We remember what the position in our country was before 1926, and what the relations were between the various sections of the population on that very matter which the hon. member has referred to this afternoon. We notice a tremendous improvement to-day, which, in my opinion, has come about in the country by a certain understanding in the declaration of the Imperial Conference of 1926. We do not hear much to-day in here about secession. Why? Because at any rate we thought that in future we should be in agreement with regard to that declaration of 1926. The 1926 declaration rests on two

*foundations, the one is complete equality of status, and the second is the free association of the members of the Empire.*

Mr. COULTER: Under a common Crown.

THE MINISTER OF FINANCE: Yes, but if the hon. member now comes and tells us that in consequence of these recommendations our country will not, in future, be able to exercise its right of self-determination when we desire to do so unless all the Dominions concur, then I say that I, personally, repudiate it. I do not think that any hon. member will be found on this side who agrees with that. If that were the position then the hon. member is very wrong when he says that it is the end of secession. No, then it is the beginning of it. Do our English friends not understand that if they give the interpretation that the British Commonwealth of Nations is based on force, that they are wrong, because we, as a matter of fact, came to an agreement in 1926 because the association was free? If that is what your party stands for, then the fight will only be starting now. . . .

Hon. F. H. P. CRESWELL (Minister of Defence): When I reflect upon the two opposite courses adopted by the right hon. member for *Standerton (General Smuts)*, and by the hon. the Prime Minister, and compare the effect of them upon this country, the effect upon the goodwill of all sections of this country to the British Commonwealth, I say the right hon. gentleman is continually keeping alive this subject, as if the assertion of the right, if we thought fit, to take our own course, was an assertion of our desire to do so now or at any time. The course taken by the Prime Minister, who knows far better the spirit which has pervaded the whole history of our country, and the manner in which it is interpreted, has been far happier in its results. And when one reflects on the application of that spirit in the declaration of the 1926 Imperial Conference obtained from such an authoritative body, I say that the free will to associate implies the power also to depart from that association, not that there is any intention to use it; that is not the case. It is undoubtedly the case that for every one out of fifty men in this country, who, before 1926, *hankered after* secession, I do not believe to-day that out of five thousand men there is one who to-day wants secession. . . . The hon. member for *Gardens (Mr. Coulter)* used the words 'freely and perpetually associated'. That is an interpretation and not the 1926 resolution. *There is not a single soul here who does not agree that the people of South Africa are as free to determine their own destiny as the people of Great Britain, and would any hon. member here assert that if the people of Great Britain decided to-morrow to drop the British Commonwealth of Nations, that they had not the right to do so? They have a perfect right to do so. . . .*

Hon. J. B. M. HERTZOG (Prime Minister): The Leader of the Opposition was calm, but he was *more than calm; it was a deliberate*

challenge, and, let me say, a challenge of such a kind that if I did not immediately accept it, and if this side had not immediately taken it up, then I, and those who sit behind me, would be nothing else than traitors to our country. It is well known to the Leader of the Opposition that since the inauguration of the Union there has been a difference on that point between him and me. He was well aware that I have on every occasion taken up the attitude, and I abide by it, that our constitution gives us the right of seceding if the people of this country want to do so. . . .

I said a moment ago that the right of separation of the Dominion, in my opinion, was nothing less than a touchstone of the freedom and independence of a Dominion. In my opinion, if a Dominion surrenders its right of secession, then it also surrenders its international freedom of which there can subsequently be not the least question. That is why I have always attached so much importance to this right of secession, and that is why, ever since 1912, I have said that this right of secession could not, and never would, be surrendered. It was such an important matter with us that it was one of the cardinal principles of the Nationalist party that no Government of the day should approve of any agreement derogating from our right of secession. . . .

What freedom of co-operation is there if we may not separate when we want to? Have my hon. friends ever thought that the day when the freedom of South Africa is doubted we shall have no right to expect any co-operation? Is that not precisely what the result will be of the action of my hon. friends opposite? Allow me to give a few illustrations. The other day, for example, I made myself unpopular with thousands of Nationalists because I said that for the sake of co-operation we should decide not to nominate a Governor-General of South Africa. I could, however, only do that because I felt myself safe on the basis of our entire freedom. Do you think that I can again incur that disfavour if I think that we are not free, but are kept within the Empire by force? There are other matters of equally great importance. An Imperial Conference is being held shortly. There we shall discuss matters of the greatest economic importance, and they will all be settled on the basis of co-operation. . . . You can get everything from any people, and especially from our people, provided you respect their freedom. . . . If it were not for my full conviction that we are a free nation, and that we have the fullest right to secede from the Empire when and if we choose to do so, I should not give my support to co-operation in any way at the Imperial Conference before that right had been granted to South Africa in unambiguous terms.

(b) *Irish Free State*

(Cf. *infra*, sub-section H. 4, pp. 449-52.)

## 3. THE NEUTRALITY OF THE DOMINIONS IN EMPIRE WARS

(*South African Assembly Debates*, March 8, 1928, pp. 1843-59)

Hon. J. B. M. HERTZOG (Prime Minister): I would like to draw the attention of the House to an observation by the Conference (of 1926) which should never be lost sight of. Speaking on the subject of the general conduct of foreign policy, the Conference after having observed that—

it was frankly recognized that in this sphere, as in the sphere of defence, the major share of responsibility rests now, and must for some time continue to rest, with His Majesty's Government in Great Britain,

gives expression to the following. 'We felt', it says—

that the governing consideration underlying all discussions of this problem must be that neither Great Britain nor the Dominions could be committed to the acceptance of active obligations except with the definite assent of their own Governments.

This governing consideration mentioned by the Imperial Conference is of the utmost importance and significance. Tacitly it reaffirms in the sphere of foreign relations the general right of independent action of each separate member of the Commonwealth, while it expressly disclaims liability and responsibility without consent in the conduct and conclusion of foreign relations, by no matter which of the members of the commonwealth. This governing consideration is a vital necessity for the international status of every member of the Commonwealth, without which there could be no sovereign international independence for any member—not even for Great Britain herself. It is this consideration upon which the group unit idea of Empire of a few years ago had to suffer shipwreck, and upon which every similar idea involving the existence of a super-state or super-authority, must inevitably come to grief, so long as the members of the Commonwealth are possessed of that healthy spirit of individual national pride and endeavour which characterizes every one of them to-day. It is, finally, this consideration which has made the Commonwealth possible, and which will make the Commonwealth, as a league of free nations, persist and flourish when all Empires based on the subjection of individual states shall have ceased to be possible. . . .

We have already heard the Secretary of State for Dominion Affairs declare that—

. . . every Government of the Empire is, if it so wish, entitled to exercise every function of national and international life.

This clear statement, assigning to every individual state in the Empire complete independence of choice and action nationally and internationally, is no more than what is contained on almost every page of the Report.

Nevertheless, this full Dominion independence has from time to time been challenged, on the alleged ground that no member of the British Commonwealth possesses the right to neutrality in the case of Great Britain or a Dominion being at war. . . . I am one of those who maintain that the Union, as every other Dominion, has, in case of war between Great Britain and any other state, the right to remain neutral and have her neutrality respected by the belligerents.

Those who differ from me in this view are prepared to concede that the Union, and likewise any other Dominion, has the right to declare that it will not actively participate in any war in which Great Britain is involved; but then they proceed to maintain that from the moment Great Britain is at war with a foreign country, every Dominion is *ipso facto* in a state of war no matter whether it has declared its neutrality or not—in other words, that a declaration of neutrality by a Dominion has no international force or binding effect in respect to Great Britain's enemy at war with her.

To me this view appeared fallacious long before 1919, and since the coming into existence of the League of Nations and the League membership of the Dominions, I feel convinced that it must be rejected as wholly untenable.

Before pointing out the inconsistencies of that view with the status and obligations of the Dominions under the League of Nations, let me refer to a few other objections to that view, quite apart from the League and the Covenant.

First: The Dominions are admitted to-day to be free and independent countries, equal in status to Great Britain and in no way subordinate to her in any aspect of their domestic or external affairs, while they must now and always remain the sole judge of the nature and extent of their co-operation with Great Britain.

Such being the state of independent freedom of the Dominions, on what grounds, then, could a Dominion which has declared to the world her desire to be neutral in a war in which Great Britain is a belligerent be denied the right of neutrality?

To say that Great Britain's enemy, as I have so often heard, if it suits him, will not respect that neutrality, surely is no answer. There is no certainty that it will respect the neutrality of any other nation, if war with that nation were to suit it better. The question is not what such an enemy may be inclined to do to us, but what it has the right to do.

If we were still in the colonial stage of our national existence—mere subordinate parts and possessions of Great Britain—no doubt England's enemy would have every right to consider us as part and parcel of Great Britain, and treat us, in spite of our declaration of neutrality, as the allies treated the German colonies during the late war.

But on what principle of law or equity could that be done against

nations, explicitly declared free and emancipated from any form of subordination, no matter in what aspect of their national or international affairs?

To reject the right of a Dominion to neutrality, therefore, to my mind, is to reject the status of the Dominions as declared by the Imperial Conference and the Report before the House.

If the Dominions were to be accepted as being in a state of war the moment Great Britain is at war, then the same must obtain for Great Britain and the other Dominions the moment one of these, say, Canada, goes to war; and it must obtain even then when Canada proceeds to war contrary to the declared will of Great Britain.

Can this really be accepted? If such a doctrine be accepted, then in what way can we be said to be autonomous, and what becomes of the declaration of the Imperial Conference, that each individual member of the Commonwealth is now and must always remain the sole judge of the nature and extent of its co-operation? . . . The denial of the right to individual neutrality, be it to Great Britain or to the Dominions, not only implies a denial of individual national freedom in its full international scope, but necessarily also assumes the existence of a collective state entity having the character of an international person, whose will overrides that of each of the constituent members of the British Empire—be it that of Great Britain or of a Dominion. In other words, it assumes the existence of a super or higher central authority. I do not think there can be any doubt with regard to that. Let me, however, here remind hon. members, that the question of a higher or central authority is not one which was overlooked, or merely by implication decided upon by the Imperial Conference. On the contrary, it was specifically raised during the discussion at the Conference, and the idea of any central or coercive authority was frankly and advisedly rejected. . . .

Sir THOMAS WATT: Was the question of neutrality discussed at the Conference?

The PRIME MINISTER: No, it was not. . . .

I wish to consider this question now in the light of the existence of the League of Nations and our membership of the League of Nations. It must not be forgotten that the Dominions, equally with Great Britain, are, since 1919, members of the League of Nations. The primary object of the League being peace and the maintenance of peace amongst the nations, the question of neutrality must necessarily be a matter of deepest concern to the League. For that reason, membership of the League imposes, under certain circumstances, neutrality as a duty. If, therefore, the view be correct that neither Great Britain nor any Dominion has the right to individual neutrality in the case of any other member of the Commonwealth being at war, then that duty to remain neutral imposed by the Covenant of the League on all members, cannot in such a case hold in respect of Great

Britain and the Dominions, *inter se*. Is this so? If it is, then it can only be because in some way or another the Covenant of the League provides for a special exemption to Great Britain and the Dominions from the duty of remaining neutral in the event of a war in which one or other of them is a belligerent. . . . Let us look at the Covenant of the League and observe the form which was adopted in the annex to the Covenant for notifying the membership of Great Britain and the Dominions in the League—a form nowhere else adopted for any of the other members. Nothing is more clear than that when that form was adopted it was done with the intention that it should serve as a notification to the other members of the League and to the world at large that Great Britain and the Dominions, while individually contracting to become separate state members of the League, did so upon condition that they become members of the League, subject to their being, and to the right of continuing to be, members of the British Empire. As far as the other members of the League are concerned, this is a condition precedent not only of which they have been thus notified, but to which they must be presumed to have consented. As a matter of fact, we know it was a question actually discussed and decided upon during the Peace Conference. Now this condition precedent is of the utmost importance in dealing with the question of the right of neutrality by the Dominions, for it is clear that having become members of the League upon condition that their membership of the British Empire shall not be interfered with, the League can under no circumstances demand from any one of them the performance of a League duty the execution of which must entail the severance of its Imperial relationship. Hence the League can under no circumstances demand from a Dominion that it shall take up arms or commit any other act of hostility against Great Britain or against any other Dominion. But does this condition precedent to its becoming a member of the League also exempt a Dominion from observing the duty to remain neutral, or not to take up arms, when, by the Covenant, that duty is imposed upon the members of the League in general? On what grounds could this be maintained? As far as Great Britain and the other Dominions are concerned, even prior to 1919, a Dominion admittedly had the right to declare that it would not participate in a war in which Great Britain was engaged—in other words, it had the right over against the other members of the Empire, before the League came into existence, to be neutral and still to remain a member of the Empire. This right, as already pointed out, is equally admitted to-day. The neutrality, therefore, of a Dominion, it is admitted, has no effect upon its imperial relationship; which means that when the Covenant demands neutrality, no Dominion can excuse itself on the ground that that relationship will be violated. What other ground of excuse in such a case can there be? To my mind, none! The result is, that not only is a Dominion in duty



bound to be neutral where by the Covenant it is called upon to observe a state of neutrality, but every other nation, be it a member of the League or not, is bound to respect that declaration of neutrality as much as it has to respect that of any other state; and as far as the League is concerned, it will be bound, in case of a breach of that neutrality by any other power, to extend its protection to the Dominion concerned, just as it would have to do under similar circumstances to any other member. For these reasons, I must once more repeat, that to my mind there can be no reasonable doubt as to the right of any member of the British Commonwealth of Nations in case of war, to declare its neutrality and to have that neutrality internationally respected by all nations. . . .

Before leaving . . . the subject of neutrality, I wish to point out to honourable members that I am here dealing merely with the right to be neutral of a Dominion, and its right to have that neutrality respected, without in any way desiring to discuss that neutrality itself. Perhaps there is no other subject of public international law so clamouring for revision as that of neutrality. A thorough treatment of that subject, giving due consideration to Dominion state relationships and League membership, seems to me very urgently required. . . .

#### 4. THE DOMINIONS AND THE LEAGUE OF NATIONS

(*The New York Times*, September 30, 1936)

The Assembly of the League of Nations heard the spokesmen of three British Dominions to-day and found them poles apart on a basic peace policy and League reform.

W. L. Mackenzie King, Canadian Prime Minister, held that 'at this stage in the League's evolution emphasis should be placed on conciliation rather than on coercion' and made clear that Canada would have none of automatic military or economic sanctions but would decide each case when it arose.

William Joseph Jordan, of New Zealand, rose to agree with the need for conciliation but to argue that the urgent need now was to strengthen the means of enforcing the law.

'For our part,' he said, 'we are prepared to take our collective share in the application of complete economic sanctions and we are also prepared to the extent of our power to join other League members in the collective application of force against any future aggressor. To this end we would agree to the establishment of an international force.'

Between them there came Stanley M. Bruce, of Australia, leaning, however, much more to the side of Canada than to that of New Zealand.

Mr. King said:

'There is a general unwillingness of people to incur obligations which they realize they may not be able in time of crisis to fulfil,

obligations to use force and to use it at any place, at any time, in circumstances unforeseen, and in disputes over whose origin and over whose development they have had little or no control.

'This difficulty of automatic intervention increases rather than decreases when conflicts tend to become struggles between classes, between economic systems, and between social philosophies.'

Urging that the League needed to become universal, Mr. Mackenzie King argued that absence of nations from membership made coercion ineffective and coercive provisions kept prospective members away. He stressed, however, that he did not 'mean that in no circumstances would the Canadian people be prepared to share in action against an aggressor'. 'There have been no absolute commitments for or against participation in war or other forms of force', he added.<sup>1</sup>

Mr. Jordan, after summarizing 'the short and sorry tale' of Ethiopia and declaring that 'the League's continued failures may well give fatal encouragement to those relying on might rather than right', said:

'We believe the sanctions contemplated by the Covenant will be no more effective in the future than they have been in the past unless, firstly, they are made immediate and automatic; secondly, economic sanctions take the form of the complete boycott contemplated by the Covenant; and thirdly, sanctions have behind them the certainty that the powers applying the sanctions are able and, if necessary, prepared to enforce them.'

Mr. Bruce shared Mr. Mackenzie King's fear that regional pacts might become alliances, but thought the danger might be met by the suggestion of submitting them to the League for approval, made by Anthony Eden, the British Foreign Secretary. Where Mr. Mackenzie King shied at the idea of putting force behind action under Article XI, Mr. Bruce proposed that at an early stage of such action all members of the League meet to determine whether if the potential aggressor persisted they would co-operate in some action to prevent his aggression.

## H. THE IRISH FREE STATE AND THE EMPIRE, 1931-5

### I. DEBATE ON THE STATUTE OF WESTMINSTER BILL

(*British House of Commons Debates*, November 24, 1931,  
pp. 303-30)

(Amendment moved that: Nothing in this Act shall be deemed to authorize the Legislature of the Irish Free State to repeal, amend, or alter the

<sup>1</sup> Mr. Mackenzie King also said (*Montreal Gazette*, Sept. 30, 1936): 'The members of the British Commonwealth are held together by ties of friendship, by similar political institutions, and by a common attachment to democratic ideals, rather than by commitments to join together in war. The Canadian Parliament reserves to itself the right to declare, in the light of all the circumstances existing at the time, to what extent, if at all, Canada will participate in conflicts wherein other members of the Commonwealth may be engaged.'

Irish Free State Agreement Act, 1922, or the Irish Free State Constitution Act, 1922, or so much of the Government of Ireland Act, 1920, as continues to be in force in Northern Ireland.)

Colonel GRETTON: What is proposed in Clause 2, and especially in Sub-section (2), is to confer upon the Irish Free State the power to revoke any law which may have been enacted in this country or in a Dominion, either previous to, or after, the passing of the Statute of Westminster. The proposal is to endow the Parliament in Dublin with powers to revoke legislation which is set up by the Articles of Agreement between this country and the Irish Free State, and so to set on one side the Irish Constitution, as set up in the Irish Constitution Act. Nothing could be more satisfactory than the speeches which Mr. Cosgrave has been making lately, but he cannot speak for the whole Free State, and it is well known that there is a great danger of a revocation and a repeal of both these enactments, if the Opposition party should obtain a majority. . . .

Mr. J. H. THOMAS (Secretary of State for the Dominions): The report of the Debate on Friday was read by Mr. Cosgrave, who sent this letter to the Prime Minister under date 21st November:

Dear Prime Minister:

I have read the report of last Friday's Debate in the House of Commons on the Statute of Westminster Bill, and am gravely concerned at Mr. Thomas's concluding statement that the Government will be asked to consider the whole situation in the light of the Debate. I sincerely hope that this does not indicate any possibility that your Government would take the course of accepting an Amendment relating to the Irish Free State. I need scarcely impress upon you that the maintenance of the happy relations which now exist between our two countries is absolutely dependent upon the continued acceptance by each of us of the good faith of the other. This situation has been constantly present to our minds, and we have reiterated time and again that the Treaty is an agreement which can only be altered by consent. I mention this particularly, because there seems to be a mistaken view in some quarters that the solemnity of this instrument in our eyes could derive any additional strength from a Parliamentary law. So far from this being the case, any attempt to erect a Statute of the British Parliament into a safeguard of the Treaty would have quite the opposite effect here, and would rather tend to give rise in the mind of our people to a doubt as to the sanctity of this instrument.

What I submit to the House is this: Suppose that you were to accept this Amendment, does any member of the Committee assume that it would be binding on Mr. de Valera if he were to come back? Are there any members here who would feel satisfied that by inserting this Amendment they had safeguarded anything? If there were returned to the Irish Parliament a body of people who were determined to break the Agreement nothing that could be done in this Committee by this Amendment would stop it. . . .

Further down on the Paper there is one other suggestion that the same principle should apply to South Africa. South Africa and Ireland are the two Dominions with which there are Treaty obligations. *I ask the Committee: Do you think for one moment that on a division you would dare to insert a Clause that this should be applied to South Africa? Is there any member, knowing the position in South Africa, who would dare to risk it? If you dare not risk it for South Africa, then if you insert Ireland you merely brand her to the world, with the proclamation that the one Dominion that you cannot trust is Ireland. That would be the net effect. It is because I believe that, in the end, that course would be disastrous; it is because I do not believe that it is a real safeguard; it is because I believe that, in the end, it is better to trust the Irish people and that that will, after all, be the real and permanent safeguard, that I say that the Government are unable to accept this Amendment.*

Sir AUSTEN CHAMBERLAIN: . . . I confess that as I listened to the Debate on Friday I felt not a little anxiety lest by the Statute of Westminster we should not merely be withdrawing statutory sanction from the Treaty but should be destroying the moral obligations of the Treaty itself; that we should not only be removing the particular basis, if you like, upon which the Treaty has hitherto rested, but that we should be, if not directly taking away, at any rate authorizing the other party to the Treaty to take away the Treaty itself or abolish its conditions as they liked. . . .

I am satisfied with the public acknowledgement by the authorized spokesman of the Irish Free State Government that the Treaty is an agreement between the two nations, standing, irrespective of statutory authority, upon their mutual faith, and only to be altered by their common consent. That gives me all that I could ask and all that I want. On that understanding, and accepting it in the spirit in which it is made, and in which the Irish Government have acted since their establishment, I shall go now with confidence and faith into the Lobby on behalf of the Statute.

Mr. WINSTON CHURCHILL: . . . What has astonished me is that the Government have never disputed the principle that Clause 2 of the Statute gives legal power to the Irish Parliament to repeal the application to Ireland of the Irish Free State Act of 1922. I imagined that we should hear this disputed by legal authorities. . . .

Sir THOMAS INSKIP (Solicitor-General): I did not wish to interrupt the right hon. gentleman, but he has made a statement which I desire to say is not quite in accordance with the facts. . . . I said that in my humble judgement the Constitution could not be amended, having regard to Article 50 of the Treaty, except in accordance with the Treaty.

Mr. CHURCHILL: . . . The Irish Treaty finds no counterpart in the relations between us and any of our Dominions. It is at once more

recent, more tragical, and more solemn than any other instrument that exists, going even as far back as the Articles of the Treaty of Vereeniging. But this Irish Treaty may at no distant date become a matter of grave, real, practical politics. Suppose that a change of Government should occur in Ireland, you will be immediately confronted with a very grave crisis on this Treaty, and will be held responsible if you weaken in any way the moral—and in the moral I include the legal—rights of this country to defend the Treaty. We are in such a pusillanimous mood, apparently, that it almost has to be made a matter of apology, almost regarded as an act of impropriety, for any British representative to put forward modestly and politely, with studious and calculated courtesy, claims that are indefeasible in law. This Irish Treaty represented only what could be saved from the wrecks of great Imperial authorities, but, such as they were, they were of the greatest value, and they were fought for in the controversies between the two countries.

## 2. CORRESPONDENCE REGARDING THE PARLIAMENTARY OATH OF ALLEGIANCE AND THE LAND PURCHASE ANNUITIES

(*Parliamentary Papers (Great Britain)*, 1932, Cmd. 4056, pp. 2-8)

### I

*Statement communicated to the Secretary of State for Dominion Affairs by the High Commissioner for the Irish Free State on 22nd March, 1932*

1. The Oath is not mandatory in the Treaty.
2. We have an absolute right to modify our Constitution as the people desire.
3. The Constitution is the people's Constitution and anything affecting it appertains to our internal sovereignty and is a purely domestic matter.
4. But besides these legal and constitutional considerations there is another and paramount consideration more than sufficient in itself to make the Minister's decision final and irrevocable. The people have declared their will without ambiguity.
5. The abolition of the Oath was the principal and dominating issue before the electors. It has been the cause of all the strife and dissension in this country since the signing of the Treaty.
6. The people, and not merely those who supported the policy of the present Government, regard it as an intolerable burden, a relic of mediaevalism, a test imposed from outside under threat of immediate and terrible war.
7. The new Government have no desire whatever to be on unfriendly relations with Great Britain. Quite the contrary.
8. But the British Government must realize that real peace in Ire-

land is impossible so long as the full and free representation of the people in their Parliament is rendered impossible by a test of this character.

9. The Minister and his Government have the most sincere desire that relations between these two countries should be allowed to develop on normal lines. And normal relations between our two islands should naturally be close and friendly. But there can be no normal relations between us so long as one side insists on imposing on the other a conscience test which has no parallel in treaty relationships between States.

And even if the British Government hold the view that the Oath is mandatory in the Treaty they must recognize that such a test and imposition on the conscience of the people is completely out of place in a political agreement between two countries.

## II

### *Dispatch from the Secretary of State for Dominion Affairs to the Minister for External Affairs, Irish Free State*

Downing Street,  
23rd March, 1932.

(No. 69.)

SIR,

I have the honour to inform you that His Majesty's Government in the United Kingdom have had under consideration the information which the High Commissioner for the Irish Free State yesterday communicated to me as to the intentions of the Irish Free State Government in regard to the Oath prescribed under Article 17 of the Irish Free State Constitution.

2. In brief, the High Commissioner stated that the views of the Irish Free State Government are that the Oath is not mandatory in the Treaty of 1921 and that the Irish Free State has an absolute right to modify its Constitution in this respect.

3. In the opinion of His Majesty's Government in the United Kingdom it is manifest that the Oath is an integral part of the Treaty made ten years ago between the two countries and hitherto honourably observed on both sides. They wish to make their standpoint on this question clear to His Majesty's Government in the Irish Free State beyond a possibility of doubt.

4. His Majesty's Government in the United Kingdom further understand from a statement made by you yesterday in Dublin, though they have received no official communication on the point, that the Irish Free State Government propose to retain the land annuities accruing under the Irish Lands Acts, 1891-1909. These annuities are payments which the tenants of purchased estates make in order to repay the sums lent to them to buy their land. In the view of His Majesty's Government in the United Kingdom the Irish

Free State Government are bound by the most formal and explicit undertaking to continue to pay the land annuities to the National Debt Commissioners, and the failure to do so would be a manifest violation of an engagement which is binding in law and in honour on the Irish Free State, whatever administration may be in power, in exactly the same way as the Treaty itself is binding on both countries.

I have the honour to be, Sir,  
Your most obedient humble servant,  
J. H. THOMAS.

### III

*Dispatch from the Minister for External Affairs, Irish Free State,  
to the Secretary of State for Dominion Affairs*

Department of External Affairs,  
Irish Free State,  
5th April, 1932.

(No. 59.)

SIR,

The Government of the Irish Free State has had under consideration the views of the British Government communicated to me in your dispatch No. 69 of 23rd March.

2. Whether the Oath was or was not 'an integral part of the Treaty made ten years ago' is not now the issue. The real issue is that the Oath is an intolerable burden to the people of this State and that they have declared in the most formal manner that they desire its instant removal.

3. The suggestion in your dispatch that the Government of the Irish Free State contemplates acting dishonourably cannot in justice be let pass. The pages of the history of the relations between Great Britain and Ireland are indeed stained by many breaches of faith, but I must remind you the guilty party has not been Ireland.

4. In justice also I must point out that the observance of the agreement of 1921 has involved no parity of sacrifice as between Great Britain and Ireland. This agreement gave effect to what was the will of the British Government. It was on the other hand directly opposed to the will of the Irish people and was submitted to by them only under the threat of immediate and terrible war. Since it was signed it has cost Britain nothing. In fact Britain's prestige throughout the world has been considerably enhanced by the belief, carefully fostered, that Ireland had at last been set free and the national aspirations of her people fully satisfied. For Ireland, however, this agreement has meant the consummation of the outrage of Partition, and the alienation of the most sacred part of our national territory with all the cultural and material loss that this unnatural separation entails.

British maintenance parties are still in occupation in some of our principal ports, even in the area of the Free State. Our coastal defence is still retained in British hands. Britain claims the right in times of war or strained relations with a foreign power to make demands upon Ireland which if granted will make our right to neutrality a mockery.

This agreement divided the people of Ireland into two hostile camps, those who deemed it a duty to resist, facing the consequences, and those who deemed it prudent in the national interest temporarily to submit, the latter being placed in the no less cruel position of having apparently to hold Ireland for England with 'an economy of English lives', to quote from the late Lord Birkenhead's famous exposition of the policy in the House of Lords.

To England this agreement gave peace and added prestige. In Ireland it raised brother's hand against brother, gave us ten years of blood and tears and besmirched the name of Ireland wherever a foul propaganda has been able to misrepresent us.

During these ten years, moreover, there has been extracted from us, though in part only as a consequence of the agreement, a financial tribute which, relatively to population, puts a greater burden on the people of the Irish Free State than the burden of the war reparation payments on the people of Germany, and, relatively to taxable capacity, a burden ten times as heavy as the burden on the people of Britain of their debt payments to the United States of America.

5. But, as I have already indicated, we are dealing at the moment with the much narrower issue, whether an oath is or is not to be imposed on members elected to sit in the Parliament of the Free State. The Government of the Irish Free State must maintain that this is a matter of purely domestic concern. The elimination of the Oath, and the removal of the Articles of the Constitution necessary for that purpose, is a measure required for the peace, order, and good government of the State. The competence of the legislature of the Irish Free State to pass such a measure is not open to question and has been expressly recognized by the British legislature itself. It is the intention of my Government, therefore, to introduce immediately on the reassembly of Parliament a Bill for the removal of Article 17 of the Constitution, and for such consequential changes as may be required to make the removal effective.

6. With regard to the Land Annuities: my Government will be obliged if you will state what is the 'formal and explicit undertaking to continue to pay the Land Annuities to the National Debt Commissioners', to which you make reference in your dispatch. The Government of the Irish Free State is not aware of any such undertaking, but the British Government can rest assured that any just and lawful claims of Great Britain, or of any creditor of the Irish Free State, will be scrupulously honoured by its Government.



7. In conclusion, may I express my regret that in the statement conveying to the House of Commons the information given you by our High Commissioner that part of his message was omitted which assured your Government of the desire of the Government of the Irish Free State that the relations between the peoples of our respective countries should be friendly. These friendly relations cannot be established on pretence, but they can be established on the solid foundation of mutual respect and common interest, and they would long ago have been thus established had the forces that tend to bring us together not been interfered with by the attempts of one country to dominate the other.

I have the honour to be, Sir,

Faithfully yours,

EAMON DE VALERA.

#### IV

*Dispatch from the Secretary of State for Dominion Affairs to the Minister for External Affairs, Irish Free State*

Downing Street,

(No. 87.)

9th April, 1932.

SIR,

His Majesty's Government in the United Kingdom have received your dispatch No. 59 of the 5th April, and have read its terms with deep regret.

2. The views expressed in your dispatch go far beyond the issues originally raised, which were—the relationship to the Treaty Settlement of 1921 of the provisions of Article 17 of the Irish Free State Constitution dealing with the Parliamentary Oath of Allegiance, and the question of the Land Annuities. The terms of the dispatch make it clear that these points are but a part of a far wider issue, and that what is actually raised is nothing less than a repudiation of the settlement of 1921 as a whole.

3. His Majesty's Government in the United Kingdom could certainly not accept the sweeping statement in paragraph 3 of your dispatch, but they feel that nothing is to be gained by reviving the unhappy memories of a bygone past. His Majesty's Government in the United Kingdom entered into the 1921 Settlement with the single desire that it should end the long period of bitterness between the two countries and it is their belief that the Settlement has brought a measure of peace and contentment which could not have been reached by any other means. Further, as the direct result of that Settlement, the Irish Free State has participated in and contributed to the notable constitutional developments of the last few years, whereby the position of the Dominions as equal Members with the United Kingdom of the British Commonwealth of Nations under the Crown has been defined and made clear to the world.

4. It is true that the 1921 Settlement did not result in the establishment of a united Ireland, but the Treaty itself made the necessary provision for the union at that time of the two parts of Ireland if both had then been ready to accept it. As to the future, His Majesty's Government in the United Kingdom feel it sufficient to state that, in their opinion, there can be no conceivable hope for the establishment of a united Ireland except on the basis that its allegiance to the Crown and its membership of the British Commonwealth will continue unimpaired.

5. As regards the expressed determination of His Majesty's Government in the Irish Free State to introduce a Bill immediately for the removal of Article 17 of the Constitution, and for such consequential changes as may be required to make the removal effective, His Majesty's Government in the United Kingdom adhere absolutely to the view stated in my dispatch No. 69 of 23rd March that the Oath is an integral part of the Treaty Settlement. His Majesty's Government in the United Kingdom have publicly indicated on many occasions in the most formal and emphatic manner, that they stand absolutely by the Treaty Settlement and to this position they most firmly adhere.

6. With regard to the Land Annuities, His Majesty's Government in the United Kingdom are at a loss to understand the statement that your Government are not aware of any such 'formal and explicit undertaking' as was referred to in my dispatch of the 23rd March.

In the first place His Majesty's Government in the United Kingdom consider that, in order to avoid misunderstanding, it is desirable to place on record the origin and nature of the Irish Land Annuities. These are not payments from Government to Government. In principle the main transaction is not one between the two Governments at all, but between the Irish tenant-purchaser and the holder of the Land Stock which is, of course, held both in Great Britain and in the Irish Free State. The position is that the annuities are collected by the Irish Free State Government from the tenant-purchasers and are distributed through the National Debt Commissioners to the holders of the Stock. The Irish Land Annuities are therefore in effect payments on the instalment system by the Irish tenant for the land which he has bought, which pass through the hands both of the Irish Free State Finance Ministry and of the National Debt Commissioners, and are ultimately received by the holder of Irish Land Stock.

7. Such is the nature of the Land Annuities. The formal and explicit undertakings referred to in my dispatch of the 23rd March are as follows:

On the 12th February, 1923, a Financial Agreement was signed on behalf of the British Government and on behalf of the Government of the Irish Free State, which, *inter alia*, laid down the policy to be

pursued in regard to completed and pending agreements for the purchase of land in the Irish Free State. The first two paragraphs of the Agreement read as follows:

1. The Free State Government undertake to pay at agreed intervals to the appropriate fund the full amount of the annuities accruing due from time to time, making themselves responsible for the actual collection from the tenant-purchaser.

2. The security for such payments shall be primarily a Free State guarantee fund similar to that under existing legislation, and, secondarily, the central fund of the Irish Free State.

This undertaking was confirmed in the 'Heads of the Ultimate Financial Settlement between the British Government and the Government of the Irish Free State' which was signed on behalf of the British Government and on behalf of the Government of the Irish Free State, on the 19th March, 1926, and discussed in Dáil Éireann on the 8th December, 1926.

The first Head of this Settlement reads as follows:

The Government of the Irish Free State undertake to pay to the British Government at agreed intervals the full amount of the annuities accruing due from time to time under the Irish Land Acts, 1891-1909, without any deduction whatsoever whether on account of Income Tax or otherwise.

As stated in my dispatch of 23rd March, His Majesty's Government in the United Kingdom regard undertakings of this character as binding in law and honour on the Irish Free State, whatever administration may be in power, in exactly the same way as the Treaty itself is binding on both countries.

8. I would state in conclusion that it is the sincere hope and desire of His Majesty's Government in the United Kingdom that friendly relations between the peoples of the United Kingdom and the Irish Free State should continue. But in their view those relations cannot but be impaired by any failure in the complete fulfilment of obligations deliberately undertaken.

I have the honour to be, Sir,

Your most obedient humble servant,

J. H. THOMAS.

### 3. CORRESPONDENCE BETWEEN THE IRISH FREE STATE AND OTHER DOMINIONS ON THE ANGLO-IRISH DISPUTE, 1932

#### (a) *Correspondence between Australia and the Irish Free State*

(*The London Times*, April 5, 11, 1932)

The text of the Note sent by the Commonwealth Government to the Government of the Irish Free State was published to-day. It is as follows:

The Commonwealth Government has observed with deep con-

cern the situation which appears to be developing between the British Government and the Irish Free State. Australia as a member of the British Commonwealth of Nations has co-operated with the Free State, and with the other sister Dominions and with the United Kingdom, in removing the constitutional difficulties which have arisen upon the development of the altered status of the sister nations within the Commonwealth, and had hoped that as a result of the Imperial Conferences of 1926 and 1930 and the adoption of the Statute of Westminster by the Governments of the United Kingdom and the Dominions a position would have been reached where the full co-operation of self-governing peoples under a common Crown would have been achieved.

That any difference of opinion should arise which would tend to weaken the unity of the British Commonwealth of Nations would be profoundly deplored by the people of Australia. In addition to the many ties which bind Australia to the United Kingdom and her sister Dominions, Australia is proud to number among her citizens a large proportion of people of Irish birth, who might be vitally affected by any constitutional change involving their rights and privileges as citizens of a member of the British Commonwealth of Nations. In view of these considerations and of the fact that the British Commonwealth of Nations, composed of self-governing peoples with sovereign rights, has been built up by the united efforts and willing co-operation of this great group of sister nations, the Commonwealth Government earnestly hopes that no action will be taken that could endanger the existing unity of the British Commonwealth of Nations and the relationship of the Irish Free State to the sister Dominions and the United Kingdom.

Mr. de Valera has sent the following reply to Mr. Lyons, the Australian Prime Minister:

I am grateful for your telegram of April 1, and should like to assure you that my colleagues and I appreciate the anxiety you feel concerning the relations between the Irish Free State and Great Britain. I should like to make it clear that the obstacles in the way of friendship between Great Britain and the Free State were not created by us. The principal issue at the moment between us is the conscience test for members of our Parliament imposed by Great Britain. We have received a definite mandate from the people of the Free State to abolish that test, and we intend to secure its immediate elimination from the Constitution according to our recognized right to change our Constitution as the people desire. We wish to be on friendly terms with Great Britain, and have no doubt that we shall establish relations of real friendship as soon as Great Britain realizes that the equality of right, and not the one-sided imposition of tests and unjust burdens, is the only possible basis of friendship between us.

(b) *Correspondence between South Africa and the Irish Free State*  
(*The London Times*, April 9, 1932)

The following telegrams have passed between the Government of the Union of South Africa and the Government of the Irish Free State:

I. General Hertzog, Prime Minister of the Union of South Africa, in a telegram to Mr. de Valera, dated April 2, said:

You will permit me as a sincere supporter of the independence and freedom of the Dominions, and as one who firmly believes that, on the basis of the sovereign independence of each, co-operation between constituent parts of the British League of Nations is essential to the maintenance and prestige thereof and will benefit all and each, to express the earnest hope that nothing will be done which will seriously disturb the friendly co-operation between the two oldest of these sister States, and that present differences may be approached in a spirit of mutual goodwill and understanding, and so be brought to a satisfactory solution soon.

II. Mr. de Valera on April 7 sent the following reply to General Hertzog:

I am very grateful for your telegram of the 2nd instant, and I appreciate the motives which caused you to send it. However, I feel obliged to explain to you that the issue between us and Great Britain is not a mere question of divergent views as to the interpretation of an agreement. We refuse to acknowledge that Great Britain or any other country has the right to insist on the imposition of a conscience test on the members of our Parliament. Such an imposition is opposed to the fundamental rights of Ireland—as a distinct nation from Great Britain. The imposition was unjust from the beginning, and was forced on an unwilling people under threat of immediate and terrible war. The people have now declared their will in the most emphatic manner that the conscience test must be removed, and it is my duty as head of this Government to secure its instant removal. We have the fully recognized right to amend our Constitution according to the desire of the people, and we intend to remove the test from the Constitution through the action of the people's representatives in Parliament. There are other elements of grave injustice to Ireland in the present relationships between Great Britain and this country, but as your friendly telegram doubtless refers chiefly to the conscience test, I shall not detail those elements in this reply. I beg to assure you of the earnest good wishes of my colleagues and myself for the welfare of the Government and people of South Africa.

III. General Hertzog in a further telegram, dated April 8, to Mr. de Valera said:

I have cordially to thank you for your good wishes for the welfare of the Government and people of the Union of South Africa

expressed in your telegram of April 7 and am glad to be able to assure you that my telegram of April 2 to you was prompted solely by the sincere wish to promote the chances of a satisfactory solution of the dispute, a matter of interest to all of us, by contributing towards the creation of an atmosphere of mutual goodwill and understanding between the parties to the dispute, and was not in any way intended to be an expression of opinion on the merits of the case or on the propriety or otherwise of the raising of the issue.

#### 4. THE POSITION OF THE IRISH FREE STATE IN THE EMPIRE

(a) *Statement by the Secretary of State for the Dominions*  
(*British House of Commons Debates*, November 14, 1933,  
pp. 726-8)

MR. J. H. THOMAS (Secretary of State for the Dominions): I think it will be convenient . . . to state the position of His Majesty's Government in the United Kingdom with regard to the most recent developments in the Irish Free State and in particular to the three Bills, now before the Irish Free State Parliament, for the amendment of the Irish Free State Constitution. . . .

We are advised that the legislation conflicts in important respects with the Treaty of 1921, and its passage therefore involves a further repudiation of the obligations entered into by the Irish Free State under that Treaty. We have already made perfectly clear the view which we take of action of this kind. Quite apart from any question of legality we look upon it as a repudiation of an honourable settlement. No modification of the Treaty can properly be made except by agreement between the two countries. But that is not the only aspect of the matter.

The real significance of the Bills is that they clearly indicate an intention gradually to eliminate the Crown from the Constitution of the Irish Free State. Mr. de Valera has told us . . . that his ultimate aim is the recognition of a United Ireland as a Republic with some form of association with the British Commonwealth in some circumstances and for some reasons and the recognition of the King as the head of the association. Any such proposals would be totally unacceptable to His Majesty's Government in the United Kingdom.

Our view can be clearly stated. The Declaration of the Imperial Conference of 1926 as to the relationship of Great Britain and the Dominions under the Crown must be accepted as the basis of the constitutional position of the Irish Free State within the Empire. That Declaration is clearly inconsistent with a state of things under which the Irish Free State would be a member of the British Commonwealth of Nations for some purposes and not for all, and would cease to be united with Great Britain and the Dominions by a common allegiance to the Crown.

Our conception of membership of the British Commonwealth is something entirely different. The Irish Free State as a member of that Commonwealth is, as Mr. de Valera himself must now have learned, completely free to order her own affairs. Membership of the Commonwealth confers great advantages, which by her own action the Irish Free State is tending to lose; the privileges of common citizenship, economic advantages in trading with the rest of the Empire, and the opportunity of powerful influence in international affairs, in concert with the other members of the Commonwealth, in the cause of world peace.

Those privileges carry with them responsibilities, respect for the Crown, loyal observance of engagements, the spirit of friendship and co-operation with the other members of the British Commonwealth. It is our desire to see the Irish Free State taking her full part as a member of the Commonwealth, not grudgingly, but of her own free will, accepting the responsibilities and enjoying the privileges. If she renounce the one, she cannot hope to enjoy the other.

*(b) Correspondence between the Governments of Great Britain and the Irish Free State*

*(British House of Commons Debates, December 5, 1933, pp. 1457-9)*

Mr. J. H. THOMAS (Secretary of State for the Dominions): On the 30th November I received from Mr. de Valera a dispatch arising out of my statement in the House on 14th November. The dispatch was as follows:

Sir,

I have the honour to refer to the statement made by you in the House of Commons on the 14th instant in reply to a question relating to the dispute between the British Government and the Government of the Irish Free State.

2. On that occasion, having stated that the British Government were advised that the Bills to amend the Constitution of the Irish Free State, then before the Oireachtas, conflicted in important respects with the Treaty of 1921, you declared that the Irish Free State as a member of the Commonwealth was completely free to order her own affairs. You also said that it was the desire of the British Government to see the Irish Free State taking her full share as a member of the Commonwealth, not grudgingly but of her own free will, accepting the responsibilities and enjoying the privileges. You added that if the Irish Free State renounced the responsibilities she could not hope to enjoy the privileges of membership.

3. Following this statement the Government of the Irish Free State feel obliged to make clear beyond any possibility of doubt the attitude of the Irish people towards the British Commonwealth. The Irish people have never sought membership of the Commonwealth.

Their association with Great Britain and the Commonwealth has never on their side been a voluntary association. In every generation they have striven with such means as were at their disposal to maintain their right to exist as a distinct and independent nation, and whenever they yielded to British rule in any form they did so only under the pressure of overwhelming material force.

4. The Treaty of 1921 involved no fundamental change in their attitude. They submitted to the Treaty because they were presented with the alternative of immediate war. They did not accept it as a final settlement of their relations with Great Britain. Still less did they regard the Treaty in the sense in which the British Government seek to interpret it—as giving Great Britain a permanent right to interfere in their constitutional development.

5. The experience of the last 12 years has made it abundantly evident that lasting friendship cannot be attained on the basis of the present relationship. The Government of the Irish Free State infer from your statement of the 14th instant that the British Government also now realize the evils of a forced association and have decided not to treat as a cause of war or other aggressive action a decision of the Irish people to sever their connexion with the Commonwealth. This attitude of the British Government appears to the Government of the Irish Free State to be of such fundamental importance that it should be formulated in a direct and unequivocal statement. The Government of the Irish Free State would sincerely welcome such a statement. They believe that it would be the first step towards that free and friendly co-operation in matters of agreed common concern between Great Britain and Ireland which ought to exist between them.

That was signed by Mr. de Valera. I have to-day sent the following reply:

Sir,

I have the honour to state that your dispatch of the 29th November has received our careful consideration.

2. His Majesty's Government in the United Kingdom cannot accept the description of the relations between the two countries set out in paragraphs 3 and 4 of your dispatch. They have stated their view as to the 1921 Settlement in my dispatch of the 9th April, 1932, in the following words:

His Majesty's Government in the United Kingdom entered into the 1921 Settlement with the single desire that it should end the long period of bitterness between the two countries and it is their belief that the Settlement has brought a measure of peace and contentment which could not have been reached by any other means. Further, as the direct result of that Settlement, the Irish Free State has participated in and contributed to the notable constitutional developments of the last few years, whereby



the position of the Dominions as equal members with the United Kingdom of the British Commonwealth of Nations under the Crown has been defined and made clear to the world.

3. His Majesty's Government in the United Kingdom would point out that the Treaty Settlement was duly accepted by the elected representatives of the people of the Irish Free State, and that its acceptance was subsequently confirmed at succeeding General Elections in the Irish Free State. The period which elapsed between 1921 and 1932 was marked by the progressive development of friendly relations and co-operation between the two countries.

4. Since His Majesty's Government in the United Kingdom are thus unable to accept the assumption in paragraph 5 of your dispatch, namely, that lasting friendship cannot be attained on the basis of the present relationship, they do not see any grounds for answering a question which is founded on that assumption. They cannot believe that the Irish Free State Government contemplate the final repudiation of their Treaty obligations in the manner suggested, and consequently they do not feel called upon to say what attitude they would adopt in circumstances which they regard as purely hypothetical.

In conclusion I would state that His Majesty's Government in the United Kingdom feel that the free intercourse on equal terms with the other members of the British Commonwealth which the Irish Free State have enjoyed under the Treaty Settlement, culminating in the Statute of Westminster, is the surest proof of their freedom to work out their own destiny within the Commonwealth. We believe that the natural associations between the two countries are such that a close and friendly relationship between them is essential to their full prosperity, and I would once again emphasize what I have previously stated on many occasions, namely, that His Majesty's Government in the United Kingdom are, and always have been, most sincerely anxious to work in friendly co-operation with the Irish Free State as a member of the British Commonwealth.

I have the honour to be, &c.,

(Sgd.) J. H. THOMAS.

## 5. AMENDMENTS TO THE CONSTITUTION, 1936

(Cf. *infra*, sub-section I. 2, pp. 454-5)

### I. THE ABDICATION OF KING EDWARD VIII, 1936

#### I. THE DECLARATION OF ABDICATION ACT

(*The London Times*, December 11, 12, 1936)

(*December 11*) Directly after the Prime Minister had presented His Majesty's Declaration of Abdication Bill to the House of Commons last night the text of it was available. . . . The Bill is described as a measure 'to give effect to His Majesty's declaration of abdication;

and for purposes connected therewith'. . . : It is in the following terms:

Whereas His Majesty by His Royal Message of the tenth day of December in this present year has been pleased to declare that He is irrevocably determined to renounce the Throne for Himself and His descendants, and has for that purpose executed the Instrument of Abdication set out in the Schedule to this Act, and has signified His desire that effect thereto should be given immediately:

And whereas, following upon the communication to His Dominions of His Majesty's said declaration and desire, the Dominion of Canada pursuant to the provisions of section four of the Statute of Westminster, 1931, has requested and consented to the enactment of this Act, and the Commonwealth of Australia, the Dominion of New Zealand, and the Union of South Africa have assented thereto:

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) Immediately upon the Royal Assent being signified to this Act the Instrument of Abdication executed by His present Majesty on the tenth day of December, nineteen hundred and thirty-six, set out in the Schedule to this Act, shall have effect, and thereupon His Majesty shall cease to be King and there shall be a demise of the Crown, and accordingly the member of the Royal Family then next in succession to the Throne shall succeed thereto and to all the rights, privileges, and dignities thereto belonging.

(2) His Majesty, His issue, if any, and the descendants of that issue, shall not after His Majesty's abdication have any right, title, or interest in or to the succession to the Throne, and section one of the Act of Settlement shall be construed accordingly.

(3) The Royal Marriages Act, 1772, shall not apply to His Majesty after His abdication nor to the issue, if any, of His Majesty or the descendants of that issue.

The second clause declares that 'this Act may be cited as His Majesty's Declaration of Abdication Act, 1936'.

A Schedule to the Bill incorporates the terms of the Instrument of Abdication which Mr. Baldwin communicated to the House of Commons. . . .

(December 12) Replying to Mr. Lees-Smith, the Attorney-General explained the bearing of the Statute of Westminster upon the Bill. Australia and New Zealand had not ratified the relevant section 4.<sup>1</sup> As a matter of strict law, therefore, this Bill would apply to them; but the preamble of the Statute required general assent of all the Dominions, and though the preamble was not strictly binding, Australia, New Zealand, Canada, and South Africa would in fact pass special Acts of their own. South Africa, indeed, having passed a special Act after the Statute of Westminster, would require an Act in her own

<sup>1</sup> Cf. *supra*, Section V, E. 1, pp. 412-13.

Parliament. Canada had no such statutory requirement, but would pass an Act.

The Irish Free State had ratified the Statute of Westminster, but was entitled to pass an Act of its own. The Free State Parliament had been summoned for to-day; but he would not comment further, because the exact form of the Free State legislation was not yet known.

## 2. AMENDMENTS TO THE CONSTITUTION OF THE IRISH FREE STATE

(*The London Times*, December 12, 1936)

The two Bills introduced by Mr. de Valera in the Dáil the afternoon of December 11 show that he has taken advantage of the crisis in Great Britain to revive his famous 'Document No. 2', which was originally put forward by him as an alternative to the Anglo-Irish Treaty and provides for what might be called 'a republic within the Empire'. Its main characteristic was the doctrine of 'external association', by which the Free State should possess sovereign power in its internal affairs while recognizing the King for purposes of association with the other Dominions and Great Britain.

The first Bill—Constitution (Amendment No. 27) Bill, 1936—puts this theory into operation by removing the King from all the internal activities of the Free State. It proposes that the office of Governor-General shall be abolished and that in future the Oireachtas (Houses of Parliament) shall consist of the Dáil (Lower House) alone. Some of the functions of the Governor-General will be transferred to the Speaker, who will be empowered to summon and dissolve the Dáil and to sign Bills, while other functions will be assumed by Mr. de Valera as President of the Executive Council. The Executive Council will be empowered to appoint judges and members of the military tribunal, while the Executive Council itself will be elected and appointed by the Dáil.

The new position of the King, as conceived under this theory, is expressed in the Executive Authority (External Relations) Bill, which was also introduced the same afternoon. By it the diplomatic and consular representatives of the Free State in other countries will be appointed by the Executive Council, which also will have authority to conclude international agreements, but—

It is hereby declared and enacted (the Bill reads) that so long as Saorstát Éireann is associated with the following nations, that is to say, Australia, Canada, Great Britain, New Zealand and South Africa, and so long as the King recognized by those nations as the symbol of their co-operation continues to act on behalf of each of those nations on the advice of the several Governments thereof for the purposes of the appointment of diplomatic and consular representatives, and the conclusion of international agreements, the King so recognized may and is hereby authorized to act on

behalf of Saorstát Éireann for the like purposes as and when advised by the Executive Council to do so. The King referred to in the foregoing subsection of this section shall, for the purposes of that subsection, be the person who, if His Majesty King Edward the Eighth had died on the 10th day of December, 1936, unmarried, would for the time being be his successor under the law of Saorstát Éireann.

The one fact that emerges from these legal arguments is that the Free State has no intention to sever the link with the Commonwealth. Article One of the Free State Constitution, which determines the constitutional status of Saorstát Éireann, remains.

In the Dáil Mr. de Valera said that there was not in that Bill any proposal to sever their connexion with the States of the Commonwealth. Article One of the Constitution remained. The proposal of the Bill was to bring the law and the Constitution into accordance with the actual facts of the situation. 'As to our having consulted other members of the Commonwealth', he said, 'this is a matter which affects ourselves alone. It is purely internal. No other State is interested or has the right to be interested. As to Great Britain, a considerable time ago I undertook quite clearly that in the new Constitution there would be no reference whatsoever to the King, that constitutionally the King would not appear in that Constitution.' . . .

The Constitution (Amendment) Bill passed the Dáil by 79 votes to 54, was signed by the Governor-General, and became law. The Governor-General's last act was thus to sign the Bill which abolished his own office.



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